

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

CHAPTER 230
HOUSE BILL 2830

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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
46 CAPITAL INVESTMENT MONIES. THE REPAYMENT SCHEDULE MUST RESULT IN LOWER

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

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

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

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

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

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

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

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

1 11-254.08. Energy and water savings accounts

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

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

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

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

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

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

38 E. BEFORE THE IMPLEMENTATION OF THE ENERGY OR WATER SAVINGS MEASURES
39 OR SERVICES, THE QUALIFIED PROVIDER OR FINANCIAL INSTITUTION, TRUSTEE OR
40 PAYING AGENT AND THE COUNTY SHALL JOINTLY DEVELOP A SCHEDULE OF MONTHLY OR
41 ANOTHER MUTUALLY AGREED ON INTERVAL OF PAYMENTS FOR THE REPAYMENT OF CAPITAL
42 INVESTMENT MONIES. THE REPAYMENT SCHEDULE MUST RESULT IN LOWER ENERGY OR
43 WATER COSTS, WHICH SHALL INCLUDE THE TOTAL COST OF ALL THE INSTALLED ENERGY
44 OR WATER SAVINGS MEASURES FOR THE COUNTY OVER THE TERM OF THE CONTRACT, WHICH
45 SHALL NOT EXCEED FIFTEEN YEARS. THE REPAYMENT SCHEDULE SHALL BE INCLUDED IN
46 THE CONTRACT.

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

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

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

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

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

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

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

42 15-213.01. Procurement practices; guaranteed energy cost
43 savings contracts; definitions

44 A. Notwithstanding section 15-213, subsection A, a school district may
45 contract for the procurement of a guaranteed energy cost savings contract
46 with a qualified provider through a competitive sealed proposal process as

1 provided by the procurement practices adopted by the state board of
2 education.

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

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

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

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

36 F. The guaranteed energy cost savings contract shall require that, in
37 determining whether the projected energy savings calculations have been met,
38 the energy ~~or operational cost~~ savings shall be computed by comparing the
39 energy baseline before installation or implementation of the energy cost
40 savings measures with the energy consumed ~~and operational costs avoided~~ after
41 installation or implementation of the energy cost savings measures. The
42 qualified provider and the school district may agree to make modifications to
43 the energy baseline only for any of the following:

- 44 1. Changes in utility rates.
- 45 2. Changes in the number of days in the utility billing cycle.
- 46 3. Changes in the square footage of the facility.

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

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

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

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

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

36 J. The guaranteed energy cost savings contract shall include a written
37 guarantee of the qualified provider that ~~either the energy or operational~~
38 ~~costs savings, or both,~~ will meet or exceed the costs of the energy cost
39 savings measures over the ~~expected life of the energy cost savings measures~~
40 ~~implemented or within twenty five years, whichever is shorter~~ **TERM OF THE**
41 **CONTRACT, WHICH SHALL NOT EXCEED FIFTEEN YEARS.** The qualified provider
42 shall:

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

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

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

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

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

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

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

18 1. The name of the project.

19 2. The qualified provider.

20 3. The total cost of the project.

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

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

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

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

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

34 R. For the purposes of this section:

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

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

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

- 1 (a) Insulating the building structure or systems in the building.
2 (b) Storm windows or doors, caulking or weather stripping, multiglazed
3 windows or door systems, additional glazing, reductions in glass area, or
4 other window and door system modifications that reduce energy consumption.
5 (c) Automated or computerized energy control systems.
6 (d) Heating, ventilating or air conditioning system modifications or
7 replacements, **INCLUDING GEOTHERMAL**.
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)~~ (i) Procurement of low-cost utility supplies of all types,
22 including electricity, natural gas, propane and water.
23 ~~(l)~~ (j) Devices that reduce water consumption and water costs or that
24 reduce sewer charges.
25 ~~(m)~~ (k) Rainwater harvesting systems.
26 ~~(n)~~ (l) Combined heat and power systems.
27 ~~(o)~~ (m) Renewable and alternative energy projects and renewable
28 energy power service agreements.
29 ~~(p)~~ (n) Self-generation systems.
30 ~~(q)~~ (o) Any additional building systems and infrastructure that
31 produce energy, or that provide utility ~~or operational~~ cost savings not
32 specifically mentioned in this paragraph, if the improvements meet the life
33 cycle cost requirement and enhance building system performance or occupant
34 comfort and safety, **EXCLUDING THOSE SYSTEMS THAT FALL UNDER THE PROVISIONS OF**
35 **SECTION 15-213.02**.
36 (p) **GEOTHERMAL**.
37 4. "Guaranteed energy cost savings contract" means a contract for
38 implementing one or more energy cost savings measures.
39 5. "Life cycle cost" means the sum of present values of investment
40 costs, capital costs, installation costs, energy costs, operating costs,
41 maintenance costs and disposal costs **AND UTILITY REBATES** over the life of the
42 project, product or measure as provided by federal life cycle cost rules,
43 regulations and criteria contained in the United States department of energy
44 federal energy management program "guidance on life-cycle cost analysis"
45 required by executive order 13423, January 2007.

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

4 ~~7.~~ 6. "Qualified provider" means a person or a business THAT IS
5 experienced in designing, implementing or installing energy cost savings
6 measures, THAT HAS A RECORD OF ESTABLISHED PROJECTS OR MEASURES OF SIMILAR
7 SIZE AND SCOPE, THAT HAS DEMONSTRATED TECHNICAL, OPERATIONAL, FINANCIAL AND
8 MANAGERIAL CAPABILITIES TO DESIGN AND OPERATE COST SAVINGS MEASURES AND
9 PROJECTS AND THAT HAS THE FINANCIAL ABILITY TO SATISFY GUARANTEES FOR ENERGY
10 COST SAVINGS.

11 Sec. 4. Repeal

12 A. Section 15-213.01, Arizona Revised Statutes, as amended by Laws
13 2010, chapter 117, section 4, is repealed.

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

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

18 15-213.03. Procurement practices; guaranteed energy production
19 contracts; definitions

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

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

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

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

45 E. A GUARANTEED ENERGY PRODUCTION CONTRACT SHALL INCLUDE A GUARANTEED
46 ENERGY PRICE, AND A WRITTEN GUARANTEED ENERGY PRODUCTION AS MEASURED ON AN

1 ANNUAL BASIS OVER THE EXPECTED LIFE OF THE ENERGY PRODUCTION MEASURES
2 IMPLEMENTED OR WITHIN FIFTEEN YEARS, WHICHEVER IS SHORTER. THE QUALIFIED
3 PROVIDER SHALL:

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

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

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

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

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

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

24 1. THE NAME OF THE PROJECT.

25 2. THE QUALIFIED PROVIDER.

26 3. THE TOTAL COST OF THE PROJECT.

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

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

33 K. FOR THE PURPOSES OF THIS SECTION:

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

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

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

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

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

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

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

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

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

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

25 15-910.02. Energy and water savings accounts

26 A. Each school district may establish an energy and water savings
27 account that consists of a designated pool of capital investment monies to
28 fund energy or water saving projects in school facilities. A school district
29 may deposit in the account monies ~~from one or more companies that provide~~
30 ~~utility, energy or water services to the school district pursuant to~~
31 ~~contracts that are executed between the companies and the school district and~~
32 ~~that are designed to save energy or water in school facilities~~ GENERATED FROM
33 THE ENERGY OR WATER SAVINGS PROJECTS OR MEASURES IMPLEMENTED IN SCHOOL
34 FACILITIES. A school district may use monies in the energy and water savings
35 account for payments under a performance contract entered into pursuant to
36 section 15-213 or 15-213.01.

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

42 C. Monies deposited in an energy and water savings account shall be
43 used as a designated pool of capital investment monies to pay for the
44 incremental cost of energy or water savings measures in school facilities
45 that are owned ~~or operated~~ by the school district. Any contract entered into
46 pursuant to this section shall contain an agreement between the qualified

1 provider ~~or utility~~, AND THE energy or water services company ~~and the school~~
2 ~~district~~ that ~~each party has~~ BOTH PARTIES HAVE performed a reasonable
3 investigation to determine that the measures contemplated by the contract
4 will result in stated energy or water savings. Contract terms may extend the
5 period of the capital investment repayment schedule prescribed in subsection
6 G of this section up to the ~~expected life of the energy or water savings~~
7 ~~measures, or twenty five years, whichever is shorter~~ TERM OF THE GUARANTEED
8 ENERGY SAVINGS CONTRACT, WHICH SHALL NOT EXCEED FIFTEEN YEARS.

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

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

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

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

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

27 F. Before the implementation of the energy or water savings measures
28 or services, the qualified provider ~~or utility~~, energy or water services
29 company shall compute, and the school district shall review and approve, the
30 estimated amount of the energy or water savings and the associated impact on
31 energy or water costs to be achieved by the school district on an annual and
32 monthly basis over the ~~expected life of the measures~~ TERM OF THE GUARANTEED
33 ENERGY SAVINGS CONTRACT and shall include these estimates in the contract.
34 The qualified provider ~~or utility, energy or water services company~~ and the
35 school district shall update the annual and monthly energy or water savings
36 and associated cost impact estimates annually based on actual experience FOR
37 THE TERM OF THE GUARANTEED ENERGY SAVINGS CONTRACT.

38 G. Before the implementation of the energy or water savings measures
39 or services, the qualified provider or ~~utility, energy or water services~~
40 ~~company~~ FINANCIAL INSTITUTION, TRUSTEE OR PAYING AGENT and the school
41 district shall jointly develop a schedule of monthly OR ANOTHER MUTUALLY
42 AGREED ON INTERVAL OF payments for repayment of the capital investment monies
43 ~~to the qualified provider or utility, energy or water services company~~. The
44 repayment schedule shall result in lower energy or water costs, which shall
45 include the TOTAL cost of ALL the installed energy or water savings measures
46 for the school district over the ~~life of the installed measures that the~~

1 ~~school district would have experienced without the installation of the~~
2 ~~measures~~ TERM OF THE GUARANTEED ENERGY SAVINGS CONTRACT, WHICH SHALL NOT
3 EXCEED FIFTEEN YEARS. The repayment schedule shall be included in the
4 contract.

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

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

26 J. Any monies associated with an energy or water savings project
27 remaining in the energy and water savings account after the capital
28 investment monies of the qualified provider ~~or utility~~, energy or water
29 services company plus a reasonable carrying charge are repaid in full may be
30 transferred to the maintenance and operation portion of the school district's
31 budget, and the general budget limit may be increased by the amount
32 transferred.

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

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

45 M. School districts may deposit monies from other funding
46 sources, ~~including from clean renewable energy bonds and the American~~

1 ~~recovery and reinvestment act of 2009 funding,~~ in the energy and water
2 savings account to fund energy or water saving projects in school facilities.
3 These monies shall be repaid in a manner consistent with this section and
4 pursuant to the contract between the school district and the provider of the
5 funding.

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

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

- 11 1. The name of the project.
- 12 2. The qualified provider.
- 13 3. The total cost of the project.
- 14 4. The expected energy ~~and~~ cost savings AND RELEVANT ESCALATORS.

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

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

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

22 15-1453. Energy and water savings accounts

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

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

29 15-1650.02. Energy and water savings accounts

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

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

36 34-105. Guaranteed energy savings contracts; definitions

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

39 B. AN AGENT MAY ENTER INTO A GUARANTEED ENERGY COST SAVINGS CONTRACT
40 WITH A QUALIFIED PROVIDER IF THE AGENT DETERMINES THAT THE AMOUNT THE AGENT
41 WOULD SPEND ON THE ENERGY COST SAVINGS MEASURES RECOMMENDED IN THE PROPOSAL
42 WOULD NOT EXCEED THE AMOUNT TO BE SAVED IN ENERGY COSTS OVER THE TERM OF THE
43 CONTRACT, WHICH SHALL NOT EXCEED FIFTEEN YEARS, AFTER THE DATE THAT
44 INSTALLATION OR IMPLEMENTATION IS COMPLETE, IF THE RECOMMENDATIONS IN THE
45 PROPOSAL ARE FOLLOWED. AN AGENT SHALL RETAIN THE COST SAVINGS ACHIEVED BY A

1 GUARANTEED ENERGY COST SAVING CONTRACT, AND THESE COST SAVINGS MAY BE USED TO
2 PAY FOR THE CONTRACT AND PROJECT IMPLEMENTATION.

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

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

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

22 F. THE GUARANTEED ENERGY COST SAVINGS CONTRACT SHALL REQUIRE THAT IN
23 DETERMINING WHETHER THE PROJECTED ENERGY SAVINGS CALCULATIONS HAVE BEEN MET,
24 THE ENERGY COSTS SAVINGS SHALL BE COMPUTED BY COMPARING THE ENERGY BASELINE
25 BEFORE INSTALLATION OR IMPLEMENTATION OF THE ENERGY COST SAVINGS MEASURES
26 WITH THE ENERGY CONSUMED AFTER INSTALLATION OR IMPLEMENTATION OF THE ENERGY
27 COST SAVINGS MEASURES. THE QUALIFIED PROVIDER AND THE AGENT MAY AGREE TO
28 MAKE MODIFICATIONS TO THE ENERGY BASELINE ONLY FOR ANY OF THE FOLLOWING:

- 29 1. CHANGES IN UTILITY RATES.
- 30 2. CHANGES IN THE NUMBER OF DAYS IN THE UTILITY BILLING CYCLE.
- 31 3. CHANGES IN THE SQUARE FOOTAGE OF THE FACILITY.
- 32 4. CHANGES IN THE OPERATIONAL SCHEDULE OF THE FACILITY.
- 33 5. CHANGES IN FACILITY TEMPERATURE.
- 34 6. SIGNIFICANT CHANGES IN THE WEATHER.
- 35 7. SIGNIFICANT CHANGES IN THE AMOUNT OF EQUIPMENT OR LIGHTING UTILIZED
36 IN THE FACILITY.

37 8. SIGNIFICANT CHANGES IN THE NATURE OR INTENSITY OF ENERGY USE SUCH
38 AS THE CHANGE OF CLASSROOM SPACE TO LABORATORY SPACE.

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

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

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

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

20 1. FOR THE TERM OF THE CONTRACT, PREPARE A MEASUREMENT AND
21 VERIFICATION REPORT ON AN ANNUAL BASIS IN ADDITION TO AN ANNUAL
22 RECONCILIATION OF SAVINGS.

23 2. REIMBURSE THE AGENT FOR ANY SHORTFALL OF GUARANTEED ENERGY COST
24 SAVINGS ON AN ANNUAL BASIS.

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

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

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

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

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

41 O. FOR THE PURPOSES OF THIS SECTION:

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

45 2. "CONSTRUCTION" MEANS THE PROCESS OF BUILDING, ALTERING, REPAIRING,
46 IMPROVING OR DEMOLISHING ANY STRUCTURE OR BUILDING, OR OTHER PUBLIC

1 IMPROVEMENTS OF ANY KIND TO ANY REAL PROPERTY. CONSTRUCTION DOES NOT INCLUDE
2 THE ROUTINE OPERATION, ROUTINE REPAIR OR ROUTINE MAINTENANCE OF EXISTING
3 STRUCTURES, BUILDINGS OR REAL PROPERTY.

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

7 4. "ENERGY COST SAVINGS MEASURE" MEANS A TRAINING PROGRAM OR FACILITY
8 ALTERATION DESIGNED TO REDUCE ENERGY CONSUMPTION AND MAY INCLUDE ONE OR MORE
9 OF THE FOLLOWING, AND ANY RELATED METERS OR OTHER 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 GROUND SOURCE HEAT PUMPS.

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

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

30 (k) RAINWATER HARVESTING SYSTEMS.

31 (l) COMBINED HEAT AND POWER SYSTEMS.

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

34 (n) SELF-GENERATION SYSTEMS.

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

39 (p) GEOTHERMAL.

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

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

8 Sec. 10. Repeal

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

11 Sec. 11. Repeal

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

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

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

15 Sec. 43. Effective date

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

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

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

21 Sec. 38. Effective dates

22 ~~A.~~ Sections 15-1781, 15-1782, 15-1783, 15-1784 and 15-1851, Arizona
23 Revised Statutes, as amended by this act, are effective from and after June
24 30, 2011.

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

27 Sec. 14. Repeal

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

APPROVED BY THE GOVERNOR APRIL 10, 2012.

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