

REFERENCE TITLE: energy; water; savings accounts

State of Arizona
Senate
Fifty-fourth Legislature
Second Regular Session
2020

SB 1551

Introduced by
Senators Brophy McGee: Bowie, Carter

AN ACT

AMENDING SECTIONS 9-499.16, 11-254.08, 15-213.01, 15-213.02, 15-910.02 AND 34-105, ARIZONA REVISED STATUTES; RELATING TO ENERGY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 9-499.16, Arizona Revised Statutes, is amended
3 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
9 from the energy or water savings projects or measures implemented in
10 public facilities. A city or town may use monies in the energy and water
11 savings account for payments under a contract entered into pursuant to
12 section 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
15 for the incremental cost of energy or water savings measures in facilities
16 that are owned by the city or town. Any contract that is entered into
17 pursuant to this section shall contain an agreement between the qualified
18 provider and the energy or water services company that both parties have
19 performed a reasonable investigation to determine that the measures
20 contemplated by the contract will result in stated energy or water
21 savings. Contract terms ~~may extend the period of the capital investment~~
22 ~~repayment schedule prescribed in subsection E of this section up to the~~
23 ~~term of the contract, which~~ shall not exceed ~~fifteen~~ TWENTY-FIVE 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
29 to provide technical assistance regarding energy or water savings to
30 cities or towns by a qualified provider, ~~OR~~ energy or water services
31 company.

32 2. Payment of principal, interest, related financing costs and
33 prepayment premiums.

34 D. Before the implementation of the energy or water savings
35 measures or services, the qualified provider, ~~OR~~ energy or water services
36 company shall compute, and the city or town shall review and approve, the
37 estimated amount of the energy or water savings and the associated impact
38 on energy or water costs to be achieved by the city or town on an annual
39 and monthly basis over the term of the contract and shall include these
40 estimates in the contract. The qualified provider and the city or town
41 shall update the annual and monthly energy or water savings and associated
42 cost impact estimates annually based on actual experience for the term of
43 the contract.

44 E. Before the implementation of the energy or water savings
45 measures or services, the qualified provider or financial institution,

1 trustee or paying agent and the city or town shall jointly develop a
2 schedule of monthly or another mutually agreed on interval of payments for
3 the repayment of capital investment monies. The repayment schedule must
4 result in lower energy or water costs, which shall include the total cost
5 of all the installed energy or water savings measures for the city or town
6 over the term of the contract, which shall not exceed ~~fifteen~~ TWENTY-FIVE
7 years. The repayment schedule shall be included in the contract.

8 F. The city or town shall transfer ~~on a monthly basis~~ the amount of
9 the ~~monthly~~ payment prescribed pursuant to subsection E of this section to
10 the energy and water savings account from the maintenance and operation
11 portion of the city's or town's budget to repay any unpaid balance of the
12 capital investment previously deposited in the energy and water savings
13 account from the qualified provider; ~~OR~~ energy or water services company
14 plus a reasonable interest rate. For the period of time that the
15 company's capital investment monies and reasonable interest rate remain
16 unpaid, the qualified provider; ~~OR~~ energy or water services company shall
17 provide a separate billing or billing component to repay the capital
18 investment ~~on a monthly basis~~, pursuant to the repayment schedule
19 prescribed pursuant to subsection E of this section, which shall be paid
20 by the city or town from the energy and water savings account.

21 G. After the balance of the qualified ~~provider~~; PROVIDER'S OR
22 energy or water services company's capital investment monies deposited in
23 the energy and water savings account plus a reasonable interest rate are
24 repaid in full by the city or town, the city or town may discontinue the
25 deposit in the energy and water savings account of amounts that are
26 prescribed in subsection F of this section.

27 H. After the capital investment monies of the qualified
28 provider; ~~OR~~ energy or water services company plus a reasonable interest
29 rate are repaid in full, any monies associated with an energy or water
30 savings project remaining in the energy and water savings account may be
31 transferred to the maintenance and operation portion of the city's or
32 town's budget.

33 I. A city or town may deposit energy-related rebate or grant monies
34 in the energy and water savings account to assist in funding energy or
35 water savings projects. A city or town may use these rebate or grant
36 monies to reduce the total cost of energy or water savings projects and to
37 reduce the amount of capital investment monies received from and repaid to
38 energy or water services companies. A city or town is not required to
39 repay the rebate or grant monies in the manner described in subsection F
40 of this section pursuant to the agreements with the providers of rebate or
41 grant funds.

42 J. A city or town may deposit monies from other funding sources in
43 the energy and water savings account to fund energy or water saving
44 projects in public facilities. These monies shall be repaid in a manner

consistent with this section and pursuant to the contract between the city or town and the provider of the funding.

K. This section does not impose an obligation on any energy utility, water utility, public service corporation or agricultural improvement district to invest monies or contract with any city or town.

Sec. 2. Section 11-254.08, Arizona Revised Statutes, is amended to read:

11-254.08. Energy and water savings accounts

A. The board of supervisors may establish an energy and water savings account that consists of a designated pool of capital investment monies to fund energy or water savings projects in county facilities. The county may deposit in the account monies generated from the energy or water savings projects or measures implemented in county facilities. The county may use monies in the energy and water savings account for payments under a contract entered into pursuant to section 34-105.

B. A county shall use monies deposited in an energy and water savings account as a designated pool of capital investment monies to pay for the incremental cost of energy or water savings measures in facilities that are owned by the county. Any contract that is entered into pursuant to this section shall contain an agreement between the qualified provider and the energy or water services company that both parties have performed a reasonable investigation to determine that the measures contemplated by the contract will result in stated energy or water savings. Contract terms ~~may extend the period of the capital investment repayment schedule prescribed in subsection E of this section up to the term of the contract, which~~ shall not exceed ~~fifteen~~ TWENTY-FIVE years.

C. A county shall use expenditures from an energy and water savings account only for the following:

1. Projects or measures pursuant to a contract pursuant to this section or section 34-105 that save energy or water in facilities that are owned by the county. Monies may be used pursuant to this paragraph to provide technical assistance regarding energy or water savings to counties by a qualified provider, ~~OR~~ energy or water services company.

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

D. Before the implementation of the energy or water savings measures or services, the qualified provider, ~~OR~~ energy or water services company shall compute, and the county shall review and approve, the estimated amount of the energy or water savings and the associated impact on energy or water costs to be achieved by the county on an annual and monthly basis over the term of the contract and shall include these estimates in the contract. The qualified provider and the county shall update the annual and monthly energy or water savings and associated cost impact estimates annually based on actual experience for the term of the contract.

1 E. Before the implementation of the energy or water savings
2 measures or services, the qualified provider or financial institution,
3 trustee or paying agent and the county shall jointly develop a schedule of
4 monthly or another mutually agreed on interval of payments for the
5 repayment of capital investment monies. The repayment schedule must
6 result in lower energy or water costs, which shall include the total cost
7 of all the installed energy or water savings measures for the county over
8 the term of the contract, which shall not exceed ~~fifteen~~ TWENTY-FIVE
9 years. The repayment schedule shall be included in the contract.

10 F. The county shall transfer ~~on a monthly basis~~ the amount of the
11 ~~monthly~~ payment prescribed pursuant to subsection E of this section to the
12 energy and water savings account from the maintenance and operation
13 portion of the county's budget to repay any unpaid balance of the capital
14 investment previously deposited in the energy and water savings account
15 from the qualified provider, ~~OR~~ energy or water services company plus a
16 reasonable interest rate. For the period of time that the company's
17 capital investment monies and reasonable interest rate remain unpaid, the
18 qualified provider, ~~OR~~ energy or water services company shall provide a
19 separate billing or billing component to repay the capital investment ~~on a~~
20 ~~monthly basis~~, pursuant to the repayment schedule prescribed pursuant to
21 subsection E of this section, which shall be paid by the county from the
22 energy and water savings account.

23 G. After the balance of the qualified ~~provider~~, PROVIDER'S OR
24 energy or water services company's capital investment monies deposited in
25 the energy and water savings account plus a reasonable interest rate are
26 repaid in full by the county, the county may discontinue the deposit in
27 the energy and water savings account of amounts that are prescribed in
28 subsection F of this section.

29 H. After the capital investment monies of the qualified
30 provider, ~~OR~~ energy or water services company plus a reasonable interest
31 rate are repaid in full, any monies associated with an energy or water
32 savings project remaining in the energy and water savings account may be
33 transferred to the maintenance and operation portion of the county's
34 budget.

35 I. A county may deposit energy-related rebate or grant monies in
36 the energy and water savings account to assist in funding energy or water
37 savings projects. A county may use these rebate or grant monies to reduce
38 the total cost of energy or water savings projects and to reduce the
39 amount of capital investment monies received from and repaid to energy or
40 water services companies. A county is not required to repay the rebate or
41 grant monies in the manner described in subsection F of this section
42 pursuant to the agreements with the providers of rebate or grant funds.

43 J. A county may deposit monies from other funding sources in the
44 energy and water savings account to fund energy or water saving projects
45 in county facilities. These monies shall be repaid in a manner consistent

1 with this section and pursuant to the contract between the county and the
2 provider of the funding.

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

6 Sec. 3. Section 15-213.01, Arizona Revised Statutes, is amended to
7 read:

8 15-213.01. Procurement practices; guaranteed energy cost
9 savings contracts; definitions

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

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

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

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

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

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

1. Changes in utility rates.
2. Changes in the number of days in the utility billing cycle.
3. Changes in the square footage of the facility.
4. Changes in the operational schedule of the facility.
5. Changes in facility temperature.
6. Significant changes in the weather.
7. Significant changes in the amount of equipment or lighting used in the facility.
8. Significant changes in the nature or intensity of energy use, such as the change of classroom space to laboratory space.

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

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

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

J. The guaranteed energy cost savings contract shall include a written guarantee of the qualified provider that the energy savings will meet or exceed the costs of the energy cost savings measures over the expected life, according to the manufacturer's equipment standards, of the energy cost savings measures implemented, ~~the term of the financial agreement~~ or twenty-five years, whichever is ~~shortest~~ SHORTER. The qualified provider shall:

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

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

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

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

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

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

N. For all projects carried out under this section, the district shall report THE FOLLOWING INFORMATION to the ~~governor's office of energy policy~~ DEPARTMENT OF ADMINISTRATION:

1. The name of the project.
2. The name of the qualified provider.
3. The total cost of the project.
4. The expected energy cost savings and relevant escalators.
5. The agreed-on baseline in the measurement and verification agreement in both kilowatt hours and dollars.

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

P. A school district may use a simplified energy performance contract for projects that are less than ~~five hundred thousand dollars~~ \$500,000. Simplified energy performance contracts are not required to include an energy savings guarantee and shall comply with all requirements in this section except for the requirements that are specifically related to the energy savings guarantee and the measurement and verification of the guaranteed savings.

1 Q. For the purposes of this section:

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

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

11 3. "ENERGY COST SAVINGS" MEANS EITHER OF THE FOLLOWING:

12 (a) AN ESTIMATED REDUCTION IN NET FUEL COSTS, ENERGY COSTS, WATER
13 COSTS, STORM WATER FEES OR OTHER UTILITY COSTS, OR RELATED NET OPERATING
14 COSTS, INCLUDING COSTS FOR ANTICIPATED EQUIPMENT REPLACEMENT AND REPAIR,
15 FROM OR AS COMPARED TO AN ESTABLISHED BASELINE OF THOSE COSTS.

16 (b) AN ESTIMATED REVENUE INCREASE AS COMPARED TO AN ESTABLISHED
17 BASELINE OF THOSE REVENUES.

18 ~~3.~~ 4. "Energy cost savings measure" means a training program or
19 facility alteration designed to reduce energy consumption and may include
20 one or more of the following, and any related meters or other measuring
21 devices:

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

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

27 (c) Automated or computerized energy control systems.

28 (d) Heating, ventilating or air conditioning system modifications
29 or replacements, including geothermal.

30 (e) Replacing or modifying lighting fixtures to increase the energy
31 efficiency of the lighting system without increasing the overall
32 illumination of a facility unless an increase in illumination is necessary
33 to conform to the applicable state or local building code for the lighting
34 system after the proposed modifications are made.

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

37 (g) Energy recovery systems.

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

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

42 (j) Devices that reduce water consumption and water costs or that
43 reduce sewer charges.

44 (k) Rainwater harvesting systems.

45 (l) Combined heat and power systems.

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

(n) Self-generation systems.

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

(p) Geothermal.

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

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

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

Sec. 4. Section 15-213.02, Arizona Revised Statutes, is amended to read:

15-213.02. Program for school energy and water use efficiency programs: definitions

A. The program for school energy and water use efficiency is established within the department. The program is voluntary and is designed to facilitate cooperation between utility companies and schools to increase energy or water use efficiency and to reduce energy or water costs for schools. A school district or charter school that chooses to participate in the program shall contract with a utility company that provides retail electric, natural gas or water service to the school to finance energy or water savings at school district or charter school buildings. The utility company shall fund the energy or water savings measures and the school district or charter school shall repay the utility company investment by an energy or water charge on its utility bill equivalent to the energy or water saved by the energy savings measure.

B. School districts and charter schools that wish to participate in the program shall:

1. Negotiate an agreement with an eligible utility company. The agreement shall:

1 (a) Identify the energy or water savings measures that are proposed
2 to be financed by the utility company.

3 (b) Identify the cost of the energy or water savings measures.

4 (c) Identify the energy or water savings that the measure is
5 expected to achieve, determined by a reasonable research-based
6 investigation.

7 (d) Provide that the utility company investment and a reasonable
8 carrying charge, ~~that~~ WHICH shall not exceed the interest rate prescribed
9 pursuant to section 42-1123, subsection A, be repaid by payment at the
10 utility company's current price schedule of the amount of energy or water
11 that is projected to be saved by the savings measures, as a separately
12 defined component of the utility company's monthly bill. The payment
13 schedule may extend for up to twenty-five years, ~~OR~~ the effective life of
14 the energy or water savings measures ~~or the repayment period of the~~
15 ~~utility company's investment plus reasonable carrying charge~~, whichever
16 occurs first.

17 (e) Identify the approximate period for repayment of the utility
18 company's investment plus a reasonable carrying charge.

19 (f) Require that the utility company and the school district or
20 charter school jointly revise the estimate of energy or water savings and
21 the corresponding monthly payment annually based on actual experience.

22 (g) Provide that the school district or charter school ~~shall~~
23 receive the financial benefits of the energy or water savings measures
24 after the repayment of the utility company's investment and a reasonable
25 carrying charge. The energy or water savings projects shall be cost
26 effective over the effective life of the measures, and each project shall
27 provide utility cost savings to the school district or charter school that
28 exceed the total payments to the utility.

29 2. Request approval of the agreement from the department. The
30 department shall determine whether the agreement meets the requirements of
31 this section.

32 C. After approval of the agreement by the department, the school
33 district or charter school may enter into the approved contract. A copy
34 of each contract shall be provided to the department.

35 D. Payments to the utility company under the agreement shall be
36 considered part of the school district or charter school's maintenance and
37 operations budget and shall not be paid with excess utilities monies
38 levied pursuant to section 15-910. THE procurement of energy ~~saving~~
39 ~~SAVINGS~~ measures shall be subject to ~~the provisions of~~ section 15-213.
40 The procurement of energy savings measures shall not be subject to ~~the~~
41 ~~provisions of~~ section 15-213.01.

42 E. ~~Nothing in~~ This section ~~shall~~ DOES NOT impose an obligation on
43 any utility company to invest monies or contract with any school district
44 or charter school.

1 F. For THE purposes of this section:

2 1. "Eligible utility company" means an agricultural improvement
3 district or public service company that provides retail electric or
4 natural gas service or a utility providing water service.

5 2. "Energy or water savings measures" ~~shall include~~ INCLUDES
6 capital improvements, maintenance, technical assistance or operational
7 assistance designed to reduce energy consumption, ~~or to~~ shift energy
8 consumption to ~~off peak~~ OFF-PEAK periods or ~~to~~ reduce water use.

9 Sec. 5. Section 15-910.02, Arizona Revised Statutes, is amended to
10 read:

11 15-910.02. Energy and water savings accounts

12 A. Each school district may establish an energy and water savings
13 account that consists of a designated pool of capital investment monies to
14 fund energy or water saving projects in school facilities. A school
15 district may deposit in the account monies generated from the energy or
16 water savings projects or measures implemented in school facilities. A
17 school district may use monies in the energy and water savings account for
18 payments under a performance contract entered into pursuant to section
19 15-213 or 15-213.01.

20 B. The auditor general and the department of education shall
21 prescribe the appropriate designation of the energy and water savings
22 accounts in the uniform system of financial records and shall prescribe
23 reporting requirements on the appropriate budget forms and annual
24 financial report forms.

25 C. Monies deposited in an energy and water savings account shall be
26 used as a designated pool of capital investment monies to pay for the
27 incremental cost of energy or water savings measures in school facilities
28 that are owned by the school district. Any contract entered into pursuant
29 to this section shall contain an agreement between the qualified provider
30 and the energy or water services company that both parties have performed
31 a reasonable investigation to determine that the measures contemplated by
32 the contract will result in stated energy or water savings. Contract
33 terms may extend ~~the period of the capital investment repayment schedule~~
34 ~~prescribed in subsection 6 of this section~~ up to the expected life,
35 according to the manufacturer's equipment standards, of the energy cost
36 savings measures implemented, ~~the term of the financial agreement~~ or
37 twenty-five years, whichever is ~~shortest~~ SHORTER.

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

40 1. Projects or measures pursuant to a contract pursuant to this
41 section or section 15-213.01 that save energy or water in school
42 facilities that are owned by the school district. Monies may be used
43 pursuant to this paragraph to provide technical assistance regarding
44 energy or water savings to school districts by a qualified provider or
45 energy or water services company.

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

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

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

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

H. The school district shall transfer the amount of the payment prescribed pursuant to subsection G of this section to the energy and water savings account from the maintenance and operation portion of the school district's budget to repay any unpaid balance of the capital investment previously deposited in the energy and water savings account from the qualified provider or energy or water services company plus a reasonable carrying charge. For the period of time that the company's capital investment monies and reasonable carrying charge remain unpaid, the qualified provider or energy or water services company shall provide a separate billing or billing component to repay the capital investment pursuant to the repayment schedule prescribed pursuant to subsection G of this section, which shall be paid by the school district from the energy and water savings account. The school district's general budget limit shall be reduced by the amount of monies transferred to the energy and water savings account pursuant to this section.

I. After the balance of the qualified provider's or energy or water services company's capital investment monies deposited in the energy and water savings account plus a reasonable carrying charge are repaid in full

1 by the school district, the school district may discontinue the deposit in
2 the energy and water savings account of amounts that are prescribed in
3 subsection G of this section.

4 J. Any monies associated with an energy or water savings project
5 remaining in the energy and water savings account after the capital
6 investment monies of the qualified provider or energy or water services
7 company plus a reasonable carrying charge are repaid in full may be
8 transferred to the maintenance and operation portion of the school
9 district's budget, and the general budget limit may be increased by the
10 amount transferred.

11 K. School districts may deposit energy-related rebate or grant
12 monies in the energy and water savings account to assist in funding energy
13 or water savings projects. These rebate or grant monies may be used to
14 reduce the total cost of energy or water savings projects and to reduce
15 the amount of capital investment monies received from and repaid to
16 utility, energy or water services companies. School districts are not
17 required to repay the rebate or grant monies in the manner described in
18 subsection G of this section pursuant to the agreements with the providers
19 of rebate or grant funds.

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

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

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

32 Sec. 6. Section 34-105, Arizona Revised Statutes, is amended to
33 read:

34 34-105. Guaranteed energy cost savings contracts; definitions

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

37 B. An agent may enter into a guaranteed energy cost savings
38 contract with a qualified provider if the agent determines that the amount
39 the agent would spend on the energy cost savings measures recommended in
40 the proposal would not exceed the amount to be saved in energy costs over
41 the expected life, according to the manufacturer's equipment standards, of
42 the energy cost savings measures implemented, ~~the term of the financial~~
43 ~~agreement~~ or twenty-five years, whichever is ~~shortest~~ SHORTER, after the
44 date that installation or implementation is complete, if the
45 recommendations in the proposal are followed. An agent shall retain the

1 cost savings achieved by a guaranteed energy cost ~~saving~~ SAVINGS contract,
2 and these cost savings may be used to pay for the contract and project
3 implementation.

4 C. An agent shall use objective criteria in selecting the qualified
5 provider, including the cost of the contract, the energy savings, the net
6 projected energy savings, the quality of the technical approach, the
7 quality of the project management plan, the financial solvency of the
8 qualified provider and the experience of the qualified provider with
9 projects of similar size and scope. An agent shall state each criterion
10 with its relevant order of importance in the request for proposal.

11 D. In selecting a contractor to perform any construction work
12 related to performing the guaranteed energy cost savings contract, the
13 qualified provider may develop and use a prequalification process for
14 contractors. These prequalifications may require the contractor to
15 demonstrate that the contractor is adequately bonded to perform the work
16 and that the contractor has not failed to perform on a prior job.

17 E. The selected qualified provider shall perform a study in order
18 to establish the exact scope of the guaranteed energy cost savings
19 contract, the fixed cost savings guarantee amount and the methodology for
20 determining actual savings. The agent shall review and approve this
21 report before the actual installation of any equipment. The qualified
22 provider shall transmit a copy of the approved study to the ~~governor's~~
23 ~~office of energy policy~~ DEPARTMENT OF ADMINISTRATION.

24 F. The guaranteed energy cost savings contract shall require that
25 in determining whether the projected energy savings calculations have been
26 met, the energy costs savings shall be computed by comparing the energy
27 baseline before installation or implementation of the energy cost savings
28 measures with the energy consumed after installation or implementation of
29 the energy cost savings measures. The qualified provider and the agent
30 may agree to make modifications to the energy baseline only for any of the
31 following:

- 32 1. Changes in utility rates.
- 33 2. Changes in the number of days in the utility billing cycle.
- 34 3. Changes in the square footage of the facility.
- 35 4. Changes in the operational schedule of the facility.
- 36 5. Changes in facility temperature.
- 37 6. Significant changes in the weather.
- 38 7. Significant changes in the amount of equipment or lighting
39 utilized in the facility.
- 40 8. Significant changes in the nature or intensity of energy use
41 such as the change of classroom space to laboratory space.

42 G. The information to develop the energy baseline shall be derived
43 from historical energy costs or actual energy measurements or shall be
44 calculated from energy measurements at the facility where energy cost
45 savings measures are to be installed or implemented. The baseline shall

1 be established before the installation or implementation of energy cost
2 savings measures.

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

6 I. An agent, or two or more agents, may enter into a financing
7 agreement with a qualified provider or the financial institution, trustee
8 or paying agent for the purchase and installation or implementation of
9 energy cost savings measures. The guaranteed energy cost savings contract
10 may provide for payments over a period of not more than the expected life,
11 according to the manufacturer's equipment standards, of the energy cost
12 savings measures implemented, ~~the term of the financial agreement~~ or
13 twenty-five years, whichever is ~~shortest~~ SHORTER. The contract shall
14 provide that all payments, except obligations on termination of the
15 contract before its expiration, shall be made pursuant to the terms of the
16 agreement. If an agent purchases the energy cost savings measure, the
17 qualified provider shall guarantee that the energy cost savings meet or
18 exceed the agent's total cost of purchase.

19 J. The guaranteed energy cost savings contract shall include a
20 written guarantee of the qualified provider that the energy cost savings
21 will meet or exceed the costs of the energy cost savings measures over the
22 expected life, according to the manufacturer's equipment standards, of the
23 energy cost savings measures implemented, ~~the term of the financial~~
24 ~~agreement~~ or twenty-five years, whichever is ~~shortest~~ SHORTER, except as
25 provided in subsection I of this section. The qualified provider shall:

26 1. For the term of the contract, prepare a measurement and
27 verification report on an annual basis in addition to an annual
28 reconciliation of savings.

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

31 3. Use the international performance and measurement and
32 verification protocol standards or the federal energy management program
33 standards to validate the savings guarantee.

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

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

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

42 N. An agent may use a simplified energy performance contract for
43 projects less than ~~five hundred thousand dollars~~ \$500,000. Simplified
44 energy performance contracts are not required to include an energy savings
45 guarantee and shall comply with all requirements in this section except

1 for the requirements that are specifically related to the energy savings
2 guarantee and the measurement and verification of the guaranteed savings.

3 0. For the purposes of this section:

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

8 2. "Construction" means the process of building, altering,
9 repairing, improving or demolishing any structure or building, or other
10 public improvements of any kind to any real property. Construction does
11 not include the routine operation, routine repair or routine maintenance
12 of existing structures, buildings or real property.

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

16 4. "ENERGY COST SAVINGS" MEANS EITHER OF THE FOLLOWING:

17 (a) AN ESTIMATED REDUCTION IN NET FUEL COSTS, ENERGY COSTS, WATER
18 COSTS, STORM WATER FEES, OR OTHER UTILITY COSTS, OR RELATED NET OPERATING
19 COSTS, INCLUDING COSTS FOR ANTICIPATED EQUIPMENT REPLACEMENT AND REPAIR,
20 FROM OR AS COMPARED TO AN ESTABLISHED BASELINE OF THOSE COSTS.

21 (b) AN ESTIMATE REVENUE INCREASE AS COMPARED TO AN ESTABLISHED
22 BASELINE OF THOSE REVENUES.

23 ~~4.~~ 5. "Energy cost savings measure" means a training program or
24 facility alteration designed to reduce energy consumption and may include
25 one or more of the following, and any related meters or other measuring
26 devices:

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

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

32 (c) Automated or computerized energy control systems.

33 (d) Heating, ventilating or air conditioning system modifications
34 or replacements, including ground source heat pumps.

35 (e) Replacing or modifying lighting fixtures to increase the energy
36 efficiency of the lighting system without increasing the overall
37 illumination of a facility unless an increase in illumination is necessary
38 to conform to the applicable state or local building code for the lighting
39 system after the proposed modifications are made.

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

42 (g) Energy recovery systems.

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

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

3 (j) Devices that reduce water consumption and water costs or that
4 reduce sewer charges.

5 (k) Rainwater harvesting systems.

6 (l) Combined heat and power systems.

7 (m) Renewable and alternative energy projects and renewable energy
8 power service agreements.

9 (n) Self-generation systems.

10 (o) Any additional building systems and infrastructure that produce
11 energy, or that provide utility cost savings not specifically mentioned in
12 this paragraph, if the improvements meet the life cycle cost requirement
13 and enhance building system performance or occupant comfort and safety.

14 (p) Geothermal.

15 ~~5.~~ 6. "Life cycle cost" means the sum of the present values of
16 investment costs, capital costs, installation costs, energy costs,
17 operating costs, maintenance costs and disposal costs and utility rebates
18 over the life of the project, product or measure as provided by federal
19 life cycle cost rules, regulations and criteria contained in the United
20 States department of energy federal energy management program "guidance on
21 life-cycle cost analysis" required by executive order 13423, January 2007.

22 ~~6.~~ 7. "Qualified provider" means a person or a business that is
23 experienced in designing, implementing or installing energy cost savings
24 measures, that has a record of established projects or measures of similar
25 size and scope, that has demonstrated technical, operational, financial
26 and managerial capabilities to design and operate cost savings measures
27 and projects and that has the financial ability to satisfy guarantees for
28 energy cost savings.