

House Engrossed

energy; water; savings accounts.

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
First Regular Session  
2021

# **HOUSE BILL 2333**

AN ACT

AMENDING SECTIONS 9-499.16, 11-254.08, 15-213.01, 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~~  
~~repayment schedule prescribed in subsection E of this section up to the~~  
~~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 ~~OR OTHER~~ costs ~~AND REVENUE~~ to be achieved by the city  
39 or town on an annual and monthly basis over the term of the contract and  
40 shall include these estimates in the contract. The qualified provider and  
41 the city or town shall update the annual and monthly energy or water  
42 savings and associated cost impact estimates annually based on actual  
43 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 city or town shall jointly develop a  
4 schedule of monthly or another mutually agreed on interval of payments for  
5 the repayment of capital investment monies. The repayment schedule must  
6 result in lower energy, ~~or~~ water **OR OTHER** costs **OR INCREASED REVENUE**,  
7 which shall include the total cost of all the installed energy or water  
8 savings measures for the city or town over the term of the contract, which  
9 shall not exceed **fifteen TWENTY-FIVE** years. The repayment schedule shall  
10 be included in the contract.

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

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

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

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

1       J. A city or town may deposit monies from other funding sources in  
2 the energy and water savings account to fund energy or water saving  
3 projects in public facilities. These monies shall be repaid in a manner  
4 consistent with this section and pursuant to the contract between the city  
5 or town and the provider of the funding.

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

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

11       11-254.08. Energy and water savings accounts

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

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

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

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

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

39       D. Before the implementation of the energy or water savings  
40 measures or services, the qualified provider, ~~OR~~ energy or water services  
41 company shall compute, and the county shall review and approve, the  
42 estimated amount of the energy or water savings and the associated impact  
43 on energy, ~~or~~ water ~~OR~~ OTHER costs ~~AND REVENUE~~ to be achieved by the  
44 county on an annual and monthly basis over the term of the contract and  
45 shall include these estimates in the contract. The qualified provider and

1 the county shall update the annual and monthly energy or water savings and  
2 associated cost impact estimates annually based on actual experience for  
3 the term of the contract.

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

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

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

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

39 I. A county may deposit energy-related rebate or grant monies in  
40 the energy and water savings account to assist in funding energy or water  
41 savings projects. A county may use these rebate or grant monies to reduce  
42 the total cost of energy or water savings projects and to reduce the  
43 amount of capital investment monies received from and repaid to energy or  
44 water services companies. A county is not required to repay the rebate or

1 grant monies in the manner described in subsection F of this section  
2 pursuant to the agreements with the providers of rebate or grant funds.

3 J. A county may deposit monies from other funding sources in the  
4 energy and water savings account to fund energy or water saving projects  
5 in county facilities. These monies shall be repaid in a manner consistent  
6 with this section and pursuant to the contract between the county and the  
7 provider of the funding.

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

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

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

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

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

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

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

43 E. A study shall be performed by the selected qualified provider in  
44 order to establish the exact scope of the guaranteed energy cost savings  
45 contract, the fixed cost savings guarantee amount and the methodology for

1 determining actual savings. This report shall be reviewed and approved by  
2 the school district before the actual installation of any equipment. The  
3 qualified provider shall transmit a copy of the approved study to the  
4 school facilities board and the ~~governor's office of energy policy~~  
5 **DEPARTMENT OF ADMINISTRATION**.

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

- 14 1. Changes in utility rates.
- 15 2. Changes in the number of days in the utility billing cycle.
- 16 3. Changes in the square footage of the facility.
- 17 4. Changes in the operational schedule of the facility.
- 18 5. Changes in facility temperature.
- 19 6. Significant changes in the weather.
- 20 7. Significant changes in the amount of equipment or lighting used  
in the facility.

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

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

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

37 I. A school district, or two or more school districts, may enter  
38 into a financing agreement with a qualified provider or the financial  
39 institution, trustee or paying agent for the purchase and installation or  
40 implementation of energy cost savings measures. The guaranteed energy  
41 cost savings contract may provide for payments over a period of not more  
42 than the expected life, according to the manufacturer's equipment  
43 standards, of the energy cost savings measures implemented, the term of  
44 the financial agreement or twenty-five years, whichever is shortest. The  
45 contract shall provide that all payments, except obligations on

1 termination of the contract before its expiration, shall be made pursuant  
2 to the terms of the financing agreement. If a school district purchases  
3 the energy cost savings measure, the qualified provider shall guarantee  
4 that the energy cost savings meet or exceed the school district's total  
5 cost of the energy savings project purchase.

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

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

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

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

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

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

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

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

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

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

42 P. A school district may use a simplified energy performance  
43 contract for projects that are less than ~~five hundred thousand dollars~~  
44 \$500,000. Simplified energy performance contracts are not required to  
45 include an energy savings guarantee and shall comply with all requirements

1 in this section except for the requirements that are specifically related  
2 to the energy savings guarantee and the measurement and verification of  
3 the guaranteed savings.

4 Q. A SCHOOL DISTRICT MAY ELECT TO USE A SHORTER CAPITAL COST  
5 REPAYMENT SCHEDULE THAN REQUIRED PURSUANT TO THIS SECTION.

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

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

13 2. "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 3. "ENERGY COST SAVINGS" MEANS ONE OR BOTH OF THE FOLLOWING:

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

21 (b) AN ESTIMATED REVENUE INCREASE ASSOCIATED WITH ADDITIONAL  
22 FACILITY USE OR THE USE OF IMPROVED METERS OR OTHER MEASURING DEVICES DUE  
23 TO IMPROVEMENTS INCLUDED IN THE GUARANTEED ENERGY COST SAVINGS CONTRACT.

24 ~~3.~~ 4. "Energy cost savings measure" means a training program or  
25 facility alteration designed to reduce energy consumption and may include  
26 one or more of the following, and any related meters or other measuring  
27 devices:

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

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

33 (c) Automated or computerized energy control systems.

34 (d) Heating, ventilating or air conditioning system modifications  
35 or replacements, including geothermal.

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

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

43 (g) Energy recovery systems.

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

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

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

(k) Rainwater harvesting systems.

## (1) 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. "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 15-910.02, Arizona Revised Statutes, is amended to read:

## 15-910.02. Energy and water savings accounts

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

B. The auditor general and the department of education shall prescribe the appropriate designation of the energy and water savings accounts in the uniform system of financial records and shall prescribe

1 reporting requirements on the appropriate budget forms and annual  
2 financial report forms.

3 C. Monies deposited in an energy and water savings account shall be  
4 used as a designated pool of capital investment monies to pay for the  
5 incremental cost of energy or water savings measures in school facilities  
6 that are owned by the school district. Any contract entered into pursuant  
7 to this section shall contain an agreement between the qualified provider  
8 and the energy or water services company that both parties have performed  
9 a reasonable investigation to determine that the measures contemplated by  
10 the contract will result in stated energy or water savings. Contract  
11 terms may extend ~~the period of the capital investment repayment schedule~~  
12 ~~prescribed in subsection G of this section~~ up to the expected life,  
13 according to the manufacturer's equipment standards, of the energy cost  
14 savings measures implemented, the term of the financial agreement or  
15 twenty-five years, whichever is shortest.

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

18 1. Projects or measures pursuant to a contract pursuant to this  
19 section or section 15-213.01 that save energy or water in school  
20 facilities that are owned by the school district. Monies may be used  
21 pursuant to this paragraph to provide technical assistance regarding  
22 energy or water savings to school districts by a qualified provider or  
23 energy or water services company.

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

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

29 F. Before the implementation of the energy or water savings  
30 measures or services, the qualified provider or energy or water services  
31 company shall compute, and the school district shall review and approve,  
32 the estimated amount of the energy or water savings and the associated  
33 impact on energy, ~~or~~ water **OR OTHER** costs **AND REVENUE** to be achieved by  
34 the school district on an annual and monthly basis over the term of the  
35 guaranteed energy cost savings contract and shall include these estimates  
36 in the contract. The qualified provider and the school district shall  
37 update the annual and monthly energy or water savings and associated cost  
38 impact estimates annually based on actual experience for the term of the  
39 guaranteed energy cost savings contract.

40 G. Before the implementation of the energy or water savings  
41 measures or services, the qualified provider or financial institution,  
42 trustee or paying agent and the school district shall jointly develop a  
43 schedule of monthly or another mutually agreed-on interval of payments for  
44 repayment of the capital investment monies. The repayment schedule shall  
45 result in lower energy, ~~or~~ water **OR OTHER** costs **OR INCREASED REVENUE**,

1 which shall include the total cost of all the installed energy or water  
2 savings measures for the school district over the expected life, according  
3 to the manufacturer's equipment standards, of the energy cost savings  
4 measures implemented, the term of the financial agreement or twenty-five  
5 years, whichever is shortest. The repayment schedule shall be included in  
6 the contract.

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

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

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

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

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

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

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

13      Sec. 5. Section 34-105, Arizona Revised Statutes, is amended to  
14 read:

15       34-105. Guaranteed energy cost savings contracts; definitions

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

18       B. An agent may enter into a guaranteed energy cost savings  
19 contract with a qualified provider if the agent determines that the amount  
20 the agent would spend on the energy cost savings measures recommended in  
21 the proposal would not exceed the amount to be saved in energy costs over  
22 the expected life, according to the manufacturer's equipment standards, of  
23 the energy cost savings measures implemented, the term of the financial  
24 agreement or twenty-five years, whichever is shortest, after the date that  
25 installation or implementation is complete, if the recommendations in the  
26 proposal are followed. An agent shall retain the cost savings achieved by  
27 a guaranteed energy cost ~~saving~~ SAVINGS contract, and these cost savings  
28 may be used to pay for the contract and project implementation.

29       C. An agent shall use objective criteria in selecting the qualified  
30 provider, including the cost of the contract, the energy savings, the net  
31 projected energy savings, the quality of the technical approach, the  
32 quality of the project management plan, the financial solvency of the  
33 qualified provider and the experience of the qualified provider with  
34 projects of similar size and scope. An agent shall state each criterion  
35 with its relevant order of importance in the request for proposal.

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

42       E. The selected qualified provider shall perform a study in order  
43 to establish the exact scope of the guaranteed energy cost savings  
44 contract, the fixed cost savings guarantee amount and the methodology for  
45 determining actual savings. The agent shall review and approve this

1 report before the actual installation of any equipment. The qualified  
2 provider shall transmit a copy of the approved study to the ~~governor's~~  
3 ~~office of energy policy~~ DEPARTMENT OF ADMINISTRATION.

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

12 1. Changes in utility rates.  
13 2. Changes in the number of days in the utility billing cycle.  
14 3. Changes in the square footage of the facility.  
15 4. Changes in the operational schedule of the facility.  
16 5. Changes in facility temperature.  
17 6. Significant changes in the weather.  
18 7. Significant changes in the amount of equipment or lighting  
19 utilized in the facility.

20 8. Significant changes in the nature or intensity of energy use  
21 such as the change of classroom space to laboratory space.

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

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

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

1       J. The guaranteed energy cost savings contract shall include a  
2 written guarantee of the qualified provider that the energy cost savings  
3 will meet or exceed the costs of the energy cost savings measures over the  
4 expected life, according to the manufacturer's equipment standards, of the  
5 energy cost savings measures implemented, the term of the financial  
6 agreement or twenty-five years, whichever is shortest, except as provided  
7 in subsection I of this section. The qualified provider shall:

8       1. For the term of the contract, prepare a measurement and  
9 verification report on an annual basis in addition to an annual  
10 reconciliation of savings.

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

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

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

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

22       M. This section does not apply to the construction of new  
23 buildings.

24       N. An agent may use a simplified energy performance contract for  
25 projects less than ~~five hundred thousand dollars~~ \$500,000. Simplified  
26 energy performance contracts are not required to include an energy savings  
27 guarantee and shall comply with all requirements in this section except  
28 for the requirements that are specifically related to the energy savings  
29 guarantee and the measurement and verification of the guaranteed savings.

30       O. AN AGENT MAY ELECT TO USE A SHORTER CAPITAL REPAYMENT SCHEDULE  
31 THAN REQUIRED PURSUANT TO THIS SECTION.

32       P. For the purposes of this section:

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

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

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

1       4. "ENERGY COST SAVINGS" MEANS ONE OR BOTH OF THE FOLLOWING:

2       (a) AN ESTIMATED REDUCTION IN NET FUEL COSTS, ENERGY COSTS, WATER  
3 COSTS, STORMWATER FEES, OR OTHER UTILITY COSTS, OR RELATED NET OPERATING  
4 COSTS, INCLUDING COSTS FOR ANTIPLICATED EQUIPMENT REPLACEMENT AND REPAIR,  
5 FROM OR AS COMPARED TO AN ESTABLISHED BASELINE OF THOSE COSTS.

6       (b) AN ESTIMATE REVENUE INCREASE ASSOCIATED WITH ADDITIONAL  
7 FACILITY USE OR THE USE OF IMPROVED METERS OR OTHER MEASURING DEVICES DUE  
8 TO IMPROVEMENTS INCLUDED IN THE GUARANTEED ENERGY COST SAVINGS CONTRACT.

9       ~~4.~~ 5. "Energy cost savings measure" means a training program or  
10 facility alteration designed to reduce energy consumption and may include  
11 one or more of the following, and any related meters or other measuring  
12 devices:

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

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

18       (c) Automated or computerized energy control systems.

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

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

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

28       (g) Energy recovery systems.

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

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

33       (j) Devices that reduce water consumption and water costs or that  
34 reduce sewer charges.

35       (k) Rainwater harvesting systems.

36       (l) Combined heat and power systems.

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

39       (n) Self-generation systems.

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

44       (p) Geothermal.

1        ~~5.~~ **6.** "Life cycle cost" means the sum of the present values of  
2 investment costs, capital costs, installation costs, energy costs,  
3 operating costs, maintenance costs and disposal costs and utility rebates  
4 over the life of the project, product or measure as provided by federal  
5 life cycle cost rules, regulations and criteria contained in the United  
6 States department of energy federal energy management program "guidance on  
7 life-cycle cost analysis" required by executive order 13423, January 2007.

8        ~~6.~~ **7.** "Qualified provider" means a person or a business that is  
9 experienced in designing, implementing or installing energy cost savings  
10 measures, that has a record of established projects or measures of similar  
11 size and scope, that has demonstrated technical, operational, financial  
12 and managerial capabilities to design and operate cost savings measures  
13 and projects and that has the financial ability to satisfy guarantees for  
14 energy cost savings.