

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~~
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 ~~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~~ 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~~ 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~~ 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
21 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 ANTICIPATED 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 ~~Q.~~ 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.

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 excluding those systems that fall under section 15-213.02.

15 (p) Geothermal.

16 ~~4.~~ 5. "Guaranteed energy cost savings contract" means a contract
17 for implementing one or more energy cost savings measures.

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

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

32 Sec. 4. Section 15-910.02, Arizona Revised Statutes, is amended to
33 read:

34 15-910.02. Energy and water savings accounts

35 A. Each school district may establish an energy and water savings
36 account that consists of a designated pool of capital investment monies to
37 fund energy or water saving projects in school facilities. A school
38 district may deposit in the account monies generated from the energy or
39 water savings projects or measures implemented in school facilities. A
40 school district may use monies in the energy and water savings account for
41 payments under a performance contract entered into pursuant to section
42 15-213 or 15-213.01.

43 B. The auditor general and the department of education shall
44 prescribe the appropriate designation of the energy and water savings
45 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 6 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 ~~O.~~ 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 ANTICIPATED 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.