



Bill Number: H.B. 2578

Crandall Floor Amendment

Reference to: House engrossed bill

Amendment drafted by: Leg Council

## FLOOR AMENDMENT EXPLANATION

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- **Allows a school district to enter into a guaranteed energy cost savings contract with a qualified provider if it determines that the energy savings project pays for itself. Limits the term of the contract to the shortest of the following: 25 years, the expected life of the item, or the term of the financial agreement.**
- **Permits an agent to enter into a contract with a qualified provider if the agent determines that the amount the agent would spend on the recommended measures in the proposal would not exceed the amount to be saved in energy costs over the term of the contract after the date that the installation or implementation is complete. Limits the term of the contract to the shortest of the following: 25 years, the expected life of the item, or the term of the financial agreement.**
- **Contains a conditional enactment.**

Amendment explanation prepared by Liisa Laikko

4/9/2012

CRANDALL FLOOR AMENDMENT  
SENATE AMENDMENTS TO H.B. 2578  
(Reference to House engrossed bill)

1 Page 1, between lines 1 and 2, insert:

2 "Section 1. Section 15-213.01, Arizona Revised Statutes, as amended by  
3 House Bill 2830, section 3, fiftieth legislature, second regular session and  
4 as transmitted to the governor, is amended to read:

5 15-213.01. Procurement practices; guaranteed energy cost  
6 savings contracts; definitions

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

12 B. A school district may enter into a guaranteed energy cost savings  
13 contract with a qualified provider if it determines that the energy savings  
14 project pays for itself within ~~fifteen years or less~~ THE EXPECTED LIFE,  
15 ACCORDING TO THE MANUFACTURER'S EQUIPMENT STANDARDS, OF THE ENERGY COST  
16 SAVINGS MEASURES IMPLEMENTED, THE TERM OF THE FINANCIAL AGREEMENT OR  
17 TWENTY-FIVE YEARS, WHICHEVER IS SHORTEST, if the recommendations in the  
18 proposal are followed. The school district shall retain the cost savings  
19 achieved by a guaranteed energy cost saving contract, and these cost savings  
20 may be used to pay for the contract and project implementation.

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

29 D. In selecting a contractor to perform any construction work related  
30 to performing the guaranteed energy cost savings contract, the qualified  
31 provider may develop and use a prequalification process for contractors.  
32 These prequalifications may require the contractor to demonstrate that the

1 contractor is adequately bonded to perform the work and that the contractor  
2 has not failed to perform on a prior job.

3 E. A study shall be performed by the selected qualified provider in  
4 order to establish the exact scope of the guaranteed energy cost savings  
5 contract, the fixed cost savings guarantee amount and the methodology for  
6 determining actual savings. This report shall be reviewed and approved by  
7 the school district before the actual installation of any equipment. The  
8 qualified provider shall transmit a copy of the approved study to the school  
9 facilities board and the governor's office of energy policy.

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

- 17 1. Changes in utility rates.
- 18 2. Changes in the number of days in the utility billing cycle.
- 19 3. Changes in the square footage of the facility.
- 20 4. Changes in the operational schedule of the facility.
- 21 5. Changes in facility temperature.
- 22 6. Significant changes in the weather.
- 23 7. Significant changes in the amount of equipment or lighting utilized  
24 in the facility.
- 25 8. Significant changes in the nature or intensity of energy use such  
26 as the change of classroom space to laboratory space.

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

33 H. At the qualified provider's expense, the proposal shall include an  
34 independent third-party validation of cost savings calculations associated  
35 with each proposed energy cost savings measure by a licensed, registered  
36 professional engineer, with credentials from the national association of

1 energy engineers, who has demonstrated experience in energy analysis. The  
2 school district must approve the selection of the credentialed engineer.

3 I. A school district, or two or more school districts, may enter into  
4 a financing agreement with a qualified provider or the financial institution,  
5 trustee or paying agent for the purchase and installation or implementation  
6 of energy cost savings measures. The guaranteed energy cost savings contract  
7 may provide for payments over a period of not more than ~~fifteen years~~ THE  
8 EXPECTED LIFE, ACCORDING TO THE MANUFACTURER'S EQUIPMENT STANDARDS, OF THE  
9 ENERGY COST SAVINGS MEASURES IMPLEMENTED, THE TERM OF THE FINANCIAL AGREEMENT  
10 OR TWENTY-FIVE YEARS, WHICHEVER IS SHORTEST. The contract shall provide that  
11 all payments, except obligations on termination of the contract before its  
12 expiration, shall be made pursuant to the terms of the financing  
13 agreement. If a school district purchases the energy cost savings measure,  
14 the qualified provider shall guarantee that the energy ~~costs~~ COST savings  
15 meet or exceed the school district's total cost of the energy savings project  
16 purchase.

17 J. The guaranteed energy cost savings contract shall include a written  
18 guarantee of the qualified provider that the energy savings will meet or  
19 exceed the costs of the energy cost savings measures over the ~~term of the~~  
20 ~~contract, which shall not exceed fifteen years~~ EXPECTED LIFE, ACCORDING TO  
21 THE MANUFACTURER'S EQUIPMENT STANDARDS, OF THE ENERGY COST SAVINGS MEASURES  
22 IMPLEMENTED, THE TERM OF THE FINANCIAL AGREEMENT OR TWENTY-FIVE YEARS,  
23 WHICHEVER IS SHORTEST. The qualified provider shall:

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

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

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

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

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

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

4 N. For all projects carried out under this section, the district shall  
5 report to the governor's office of energy policy and the school facilities  
6 board:

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

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

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

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

23 R. For the purposes of this section:

24 1. "Construction" means the process of building, altering, repairing,  
25 improving or demolishing any school district structure or building, or other  
26 public improvements of any kind to any school district real property.  
27 Construction does not include the routine operation, routine repair or  
28 routine maintenance of existing structures, buildings or real property.

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

32 3. "Energy cost savings measure" means a training program or facility  
33 alteration designed to reduce energy consumption and may include one or more  
34 of the following, and any related meters or other measuring devices:

- 35 (a) Insulating the building structure or systems in the building.

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

4 (c) Automated or computerized energy control systems.

5 (d) Heating, ventilating or air conditioning system modifications or  
6 replacements, including geothermal.

7 (e) Replacing or modifying lighting fixtures to increase the energy  
8 efficiency of the lighting system without increasing the overall illumination  
9 of a facility unless an increase in illumination is necessary to conform to  
10 the applicable state or local building code for the lighting system after the  
11 proposed modifications are made.

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

14 (g) Energy recovery systems.

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

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

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

20 (k) Rainwater harvesting systems.

21 (l) Combined heat and power systems.

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

24 (n) Self-generation systems.

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

30 (p) Geothermal.

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

33 5. "Life cycle cost" means the sum of present values of investment  
34 costs, capital costs, installation costs, energy costs, operating costs,  
35 maintenance costs and disposal costs and utility rebates over the life of the  
36 project, product or measure as provided by federal life cycle cost rules,  
37 regulations and criteria contained in the United States department of energy

1 federal energy management program "guidance on life-cycle cost analysis"  
2 required by executive order 13423, January 2007.

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

10 Sec. 2. Section 15-213.03, Arizona Revised Statutes, as added by House  
11 Bill 2830, section 5, fiftieth legislature, second regular session and as  
12 transmitted to the governor, is amended to read:

13 15-213.03. Procurement practices; guaranteed energy production  
14 contracts; definitions

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

20 B. The school district shall use objective criteria in selecting the  
21 qualified provider, including the guaranteed energy price, the guaranteed  
22 energy production, the quality of the technical approach, the quality of the  
23 project management plan, the financial solvency of the qualified provider and  
24 the experience of the qualified provider with projects of similar size and  
25 scope. The school district shall set forth each criterion with its  
26 respective numerical weighting in the request for proposal.

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

33 D. When submitting a proposal for the installation of equipment, the  
34 qualified provider shall include information containing the guaranteed energy  
35 production associated with each proposed energy production measure. The  
36 school district shall review and approve this guarantee before the actual  
37 installation of any equipment. The qualified provider shall transmit a copy

1 of the approved guarantee to the school facilities board and the governor's  
2 Office of energy policy.

3 E. A guaranteed energy production contract shall include a guaranteed  
4 energy price, and a written guaranteed energy production as measured on an  
5 annual basis over the expected life of the energy production measures  
6 implemented or within ~~fifteen~~ TWENTY-FIVE years, whichever is shorter. The  
7 qualified provider shall:

8 1. Prepare a measurement and verification report on an annual basis in  
9 addition to an annual reconciliation of any guaranteed energy production  
10 shortfall.

11 2. Reimburse the school district for any guaranteed energy production  
12 shortfall on an annual basis by multiplying any energy production shortfall  
13 by either the difference between the guaranteed energy price and the  
14 effective utility rate, or an alternative method as mutually agreed on by the  
15 school district and the provider.

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

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

22 H. The qualified provider is required to make public information in  
23 the subcontractor's bids only if the school district awards the qualified  
24 provider the guaranteed energy production contract.

25 I. For all projects carried out under this section, the district shall  
26 report to the governor's office of energy policy and the school facilities  
27 board:

- 28 1. The name of the project.  
29 2. The qualified provider.  
30 3. The total cost of the project.  
31 4. The expected guaranteed energy production and guaranteed energy  
32 price, including relevant escalators, if applicable, over the term of the  
33 guaranteed energy production contract.

34 J. For all projects carried out under this section, the district shall  
35 report to the school facilities board, by October 15 each year, the actual  
36 energy production and guaranteed energy price.

1 K. For the purposes of this section:

2 1. "Actual energy production" means the actual amount of energy that  
3 flows from the energy production measure on an annual basis as measured by a  
4 meter in kilowatt hours alternating current.

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

10 3. "Effective utility rate" means the average price per kilowatt hour  
11 that a school district paid to its utility provider for electricity service  
12 to the facility that is the subject of the guaranteed energy production  
13 contract over the previous twelve months.

14 4. "Energy production measure" means renewable and alternative energy  
15 projects or renewable energy power service agreements.

16 5. "Guaranteed energy price" means the agreed on price to be charged  
17 to the school for each kilowatt hour alternating current of actual energy  
18 production as such may change on an annual basis as set forth in the  
19 guaranteed energy production contract.

20 6. "Guaranteed energy production" means the amount of energy, measured  
21 in kilowatt hours alternating current, that the qualified provider guarantees  
22 for each year of the guaranteed energy production contract.

23 7. "Guaranteed energy production contract" means a contract for  
24 implementing one or more energy production measures between one or more  
25 qualified providers and a school district.

26 8. "Guaranteed energy production shortfall" means the amount, if any,  
27 that the actual energy production is less than the guaranteed energy  
28 production in any given year.

29 9. "Qualified provider" means a person or a business that is  
30 experienced in designing, implementing or installing energy cost savings  
31 measures, that has demonstrated technical, operational, financial and  
32 managerial capabilities to design and operate cost savings measures and  
33 projects and that has the financial ability to satisfy guarantees for  
34 guaranteed energy production, financial solvency and experience for projects  
35 of similar size and scope.

1           Sec. 3. Section 15-910.02, Arizona Revised Statutes, as amended by  
2 House Bill 2830, section 6, fiftieth legislature, second regular session and  
3 as transmitted to the governor, is amended to read:

4           15-910.02. Energy and water savings accounts

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

12           B. The auditor general and the department of education shall prescribe  
13 the appropriate designation of the energy and water savings accounts in the  
14 uniform system of financial records and shall prescribe reporting  
15 requirements on the appropriate budget forms and annual financial report  
16 forms.

17           C. Monies deposited in an energy and water savings account shall be  
18 used as a designated pool of capital investment monies to pay for the  
19 incremental cost of energy or water savings measures in school facilities  
20 that are owned by the school district. Any contract entered into pursuant to  
21 this section shall contain an agreement between the qualified provider and  
22 the energy or water services company that both parties have performed a  
23 reasonable investigation to determine that the measures contemplated by the  
24 contract will result in stated energy or water savings. Contract terms may  
25 extend the period of the capital investment repayment schedule prescribed in  
26 subsection G of this section up to the ~~term of the guaranteed energy savings~~  
27 ~~contract, which shall not exceed fifteen years~~ EXPECTED LIFE, ACCORDING TO  
28 THE MANUFACTURER'S EQUIPMENT STANDARDS, OF THE ENERGY COST SAVINGS MEASURES  
29 IMPLEMENTED, THE TERM OF THE FINANCIAL AGREEMENT OR TWENTY-FIVE YEARS,  
30 WHICHEVER IS SHORTEST.

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

33           1. Projects or measures pursuant to a contract pursuant to this  
34 section or section 15-213.01 that save energy or water in school facilities  
35 that are owned by the school district. Monies may be used pursuant to this  
36 paragraph to provide technical assistance regarding energy or water savings

1 to school districts by a qualified provider;~~—~~ OR energy or water services  
2 company.

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

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

7 F. Before the implementation of the energy or water savings measures  
8 or services, the qualified provider;~~—~~ OR energy or water services company  
9 shall compute, and the school district shall review and approve, the  
10 estimated amount of the energy or water savings and the associated impact on  
11 energy or water costs to be achieved by the school district on an annual and  
12 monthly basis over the term of the guaranteed energy savings contract and  
13 shall include these estimates in the contract. The qualified provider and the  
14 school district shall update the annual and monthly energy or water savings  
15 and associated cost impact estimates annually based on actual experience for  
16 the term of the guaranteed energy savings contract.

17 G. Before the implementation of the energy or water savings measures  
18 or services, the qualified provider or financial institution, trustee or  
19 paying agent and the school district shall jointly develop a schedule of  
20 monthly or another mutually agreed on interval of payments for repayment of  
21 the capital investment monies. The repayment schedule shall result in lower  
22 energy or water costs, which shall include the total cost of all the  
23 installed energy or water savings measures for the school district over the  
24 ~~term of the guaranteed energy savings contract, which shall not exceed~~  
25 ~~fifteen years~~ EXPECTED LIFE, ACCORDING TO THE MANUFACTURER'S EQUIPMENT  
26 STANDARDS, OF THE ENERGY COST SAVINGS MEASURES IMPLEMENTED, THE TERM OF THE  
27 FINANCIAL AGREEMENT OR TWENTY-FIVE YEARS, WHICHEVER IS SHORTEST. The  
28 repayment schedule shall be included in the contract.

29 H. The school district shall transfer on a monthly basis the amount of  
30 the monthly payment prescribed pursuant to subsection G of this section to  
31 the energy and water savings account from the maintenance and operation  
32 portion of the school district's budget to repay any unpaid balance of the  
33 capital investment previously deposited in the energy and water savings  
34 account from the qualified provider;~~—~~ OR energy or water services company  
35 plus a reasonable carrying charge. For the period of time that the company's  
36 capital investment monies and reasonable carrying charge remain unpaid, the  
37 qualified provider;~~—~~ OR energy or water services company shall provide a

1 separate billing or billing component to repay the capital investment on a  
2 monthly basis, pursuant to the repayment schedule prescribed pursuant to  
3 subsection G of this section, which shall be paid by the school district from  
4 the energy and water savings account. The school district's general budget  
5 limit shall be reduced by the amount of monies transferred to the energy and  
6 water savings account pursuant to this section.

7 I. After the balance of the qualified ~~provider,~~ PROVIDER'S OR energy  
8 or water services company's capital investment monies deposited in the energy  
9 and water savings account plus a reasonable carrying charge are repaid in  
10 full by the school district, the school district may discontinue the deposit  
11 in the energy and water savings account of amounts that are prescribed in  
12 subsection G of this section.

13 J. Any monies associated with an energy or water savings project  
14 remaining in the energy and water savings account after the capital  
15 investment monies of the qualified provider, ~~OR~~ OR energy or water services  
16 company plus a reasonable carrying charge are repaid in full may be  
17 transferred to the maintenance and operation portion of the school district's  
18 budget, and the general budget limit may be increased by the amount  
19 transferred.

20 K. School districts may deposit energy-related rebate or grant monies  
21 in the energy and water savings account to assist in funding energy or water  
22 savings projects. These rebate or grant monies may be used to reduce the  
23 total cost of energy or water savings projects and to reduce the amount of  
24 capital investment monies received from and repaid to utility, energy or  
25 water services companies. School districts are not required to repay the  
26 rebate or grant monies in the manner described in subsection G of this  
27 section pursuant to the agreements with the providers of rebate or grant  
28 funds.

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

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

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

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

6 1. The name of the project.

7 2. The qualified provider.

8 3. The total cost of the project.

9 4. The expected energy cost savings and relevant escalators.

10 5. The agreed on baseline in the measurement and verification  
11 agreement in both kilowatt hours and dollars.

12 P. For all projects carried out under this section, the district shall  
13 report to the school facilities board, by October 15 each year, the actual  
14 energy cost savings."

15 Renumber to conform

16 Page 15, after line 6, insert:

17 "Sec. 9. Section 34-105, Arizona Revised Statutes, as added by House  
18 Bill 2830, section 9, fiftieth legislature, second regular session and as  
19 transmitted to the governor, is amended to read:

20 34-105. Guaranteed energy savings contracts: definitions

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

23 B. An agent may enter into a guaranteed energy cost savings contract  
24 with a qualified provider if the agent determines that the amount the agent  
25 would spend on the energy cost savings measures recommended in the proposal  
26 would not exceed the amount to be saved in energy costs over the ~~term of the~~  
27 ~~contract, which shall not exceed fifteen years~~ EXPECTED LIFE, ACCORDING TO  
28 THE MANUFACTURER'S EQUIPMENT STANDARDS, OF THE ENERGY COST SAVINGS MEASURES  
29 IMPLEMENTED, THE TERM OF THE FINANCIAL AGREEMENT OR TWENTY-FIVE YEARS,  
30 WHICHEVER IS SHORTEST, after the date that installation or implementation is  
31 complete, if the recommendations in the proposal are followed. An agent  
32 shall retain the cost savings achieved by a guaranteed energy cost saving  
33 contract, and these cost savings may be used to pay for the contract and  
34 project implementation.

35 C. An agent shall use objective criteria in selecting the qualified  
36 provider, including the cost of the contract, the energy savings, the net  
37 projected energy savings, the quality of the technical approach, the quality

1 of the project management plan, the financial solvency of the qualified  
2 provider and the experience of the qualified provider with projects of  
3 similar size and scope. An agent shall state each criterion with its  
4 relevant order of importance in the request for proposal.

5 D. In selecting a contractor to perform any construction work related  
6 to performing the guaranteed energy cost savings contract, the qualified  
7 provider may develop and use a prequalification process for contractors.  
8 These prequalifications may require the contractor to demonstrate that the  
9 contractor is adequately bonded to perform the work and that the contractor  
10 has not failed to perform on a prior job.

11 E. The selected qualified provider shall perform a study in order to  
12 establish the exact scope of the guaranteed energy cost savings contract, the  
13 fixed cost savings guarantee amount and the methodology for determining  
14 actual savings. The agent shall review and approve this report before the  
15 actual installation of any equipment. The qualified provider shall transmit  
16 a copy of the approved study to the governor's office of energy policy.

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

- 24 1. Changes in utility rates.
- 25 2. Changes in the number of days in the utility billing cycle.
- 26 3. Changes in the square footage of the facility.
- 27 4. Changes in the operational schedule of the facility.
- 28 5. Changes in facility temperature.
- 29 6. Significant changes in the weather.
- 30 7. Significant changes in the amount of equipment or lighting utilized  
31 in the facility.
- 32 8. Significant changes in the nature or intensity of energy use such  
33 as the change of classroom space to laboratory space.

34 G. The information to develop the energy baseline shall be derived  
35 from historical energy costs or actual energy measurements or shall be  
36 calculated from energy measurements at the facility where energy cost savings  
37 measures are to be installed or implemented. The baseline shall be

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

3 H. When submitting a proposal for the installation of equipment, the  
4 qualified provider shall include information on the projected energy savings  
5 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 or  
8 paying agent for the purchase and installation or implementation of energy  
9 cost savings measures. The guaranteed energy cost savings contract may  
10 provide for payments over a period of not more than the ~~term of the contract,~~  
11 ~~which shall not exceed fifteen years~~ EXPECTED LIFE, ACCORDING TO THE  
12 MANUFACTURER'S EQUIPMENT STANDARDS, OF THE ENERGY COST SAVINGS MEASURES  
13 IMPLEMENTED, THE TERM OF THE FINANCIAL AGREEMENT OR TWENTY-FIVE YEARS,  
14 WHICHEVER IS SHORTEST. The contract shall provide that all payments, except  
15 obligations on termination of the contract before its expiration, shall be  
16 made pursuant to the terms of the agreement. If an agent purchases the  
17 energy cost savings measure, the qualified provider shall guarantee that the  
18 energy cost savings meet or exceed the agent's total cost of purchase.

19 J. The guaranteed energy cost savings contract shall include a written  
20 guarantee of the qualified provider that the energy cost savings will meet or  
21 exceed the costs of the energy cost savings measures over the ~~term of the~~  
22 ~~contract, which shall not exceed fifteen years~~ EXPECTED LIFE, ACCORDING TO  
23 THE MANUFACTURER'S EQUIPMENT STANDARDS, OF THE ENERGY COST SAVINGS MEASURES  
24 IMPLEMENTED, THE TERM OF THE FINANCIAL AGREEMENT OR TWENTY-FIVE YEARS,  
25 WHICHEVER IS SHORTEST, except as provided in subsection I of this section.  
26 The qualified provider shall:

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

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

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

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

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

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

5           N. An agent may use a simplified energy performance contract for  
6 projects less than five hundred thousand dollars. Simplified energy  
7 performance contracts are not required to include an energy savings guarantee  
8 and shall comply with all requirements in this section except for the  
9 requirements that are specifically related to the energy savings guarantee  
10 and the measurement and verification of the guaranteed savings.

11           O. For the purposes of this section:

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

15           2. "Construction" means the process of building, altering, repairing,  
16 improving or demolishing any structure or building, or other public  
17 improvements of any kind to any real property. Construction does not include  
18 the routine operation, routine repair or routine maintenance of existing  
19 structures, buildings or real property.

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

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

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

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

30           (c) Automated or computerized energy control systems.

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

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

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

3 (g) Energy recovery systems.

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

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

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

9 (k) Rainwater harvesting systems.

10 (l) Combined heat and power systems.

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

13 (n) Self-generation systems.

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

18 (p) Geothermal.

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

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

33 Sec. 10. Conditional enactment

34 A. Section 15-213.01, Arizona Revised Statutes, as amended by this  
35 act, is not effective unless section 15-213.01, Arizona Revised Statutes, as  
36 amended by House Bill 2830, section 3, fiftieth legislature, second regular  
37 session and as transmitted to the governor, becomes law.

1           B. Section 15-213.03, Arizona Revised Statutes, as amended by this  
2 act, is not effective unless section 15-213.03, Arizona Revised Statutes, as  
3 added by House Bill 2830, section 5, fiftieth legislature, second regular  
4 session and as transmitted to the governor, becomes law.

5           C. Section 15-910.02, Arizona Revised Statutes, as amended by this  
6 act, is not effective unless section 15-910.02, Arizona Revised Statutes, as  
7 amended by House Bill 2830, section 6, fiftieth legislature, second regular  
8 session and as transmitted to the governor, becomes law.

9           D. Section 34-105, Arizona Revised Statutes, as amended by this act,  
10 is not effective unless section 34-105, Arizona Revised Statutes, as added by  
11 House Bill 2830, section 9, fiftieth legislature, second regular session and  
12 as transmitted to the governor, becomes law."

13 Amend title to conform

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