

REFERENCE TITLE: clean energy; construction; technical correction

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

## **HB 2606**

Introduced by  
Representative Mason

AN ACT

AMENDING SECTION 15-231.01, ARIZONA REVISED STATUTES; RELATING TO STATE BOARD OF EDUCATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 15-213.01, Arizona Revised Statutes, is amended to  
3 read:

4 15-213.01. Procurement practices: guaranteed energy cost  
5 savings contracts: definitions

6 A. Notwithstanding section 15-213, subsection A, a school district may  
7 contract for the procurement of a guaranteed energy cost savings contract  
8 with a qualified provider through a competitive sealed proposal process as  
9 provided by the procurement practices adopted by the state board of  
10 education. To the extent the qualified provider subcontracts with  
11 contractors who will be involved in any construction associated with the  
12 guaranteed energy cost savings contract, the qualified provider must follow  
13 the provisions of section 41-2533 in selecting these contractors.

14 B. A school district may enter into a guaranteed energy cost savings  
15 contract with a qualified provider if ~~it~~ THE SCHOOL DISTRICT determines that  
16 the amount it would spend on the energy cost savings measures recommended in  
17 the proposal would not exceed the amount to be saved in energy and  
18 operational costs over the expected life of the energy cost savings measures  
19 implemented or within twenty-five years, whichever is shorter, after the date  
20 installation or implementation is complete, if the recommendations in the  
21 proposal are followed.

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

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

38 E. An in-depth feasibility study shall be performed by the selected  
39 qualified provider in order to establish the exact scope of the guaranteed  
40 energy cost savings contract, the fixed cost savings guarantee amount and the  
41 methodology for determining actual savings. This report shall be reviewed  
42 and approved by the school district prior to the actual installation of any  
43 equipment. The qualified provider shall transmit a copy of the approved  
44 in-depth feasibility study to the superintendent of public instruction.

1 F. The guaranteed energy savings contract shall require that a  
2 qualified provider perform an energy audit of the facility or facilities one  
3 year after the energy cost savings measures are installed or implemented and  
4 every three years thereafter for the length of the contract. The qualified  
5 provider shall transmit a copy of the audit to the superintendent of public  
6 instruction. The qualified provider shall pay the cost of the audit. In  
7 determining whether the projected energy savings calculations have been met,  
8 the energy or operational cost savings shall be computed by comparing the  
9 energy baseline before installation or implementation of the energy cost  
10 savings measures with the energy consumed and operational costs avoided after  
11 installation or implementation of the energy cost savings measures. The  
12 qualified provider and the school district may agree to make modifications to  
13 the energy baseline only for 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 utilized  
21 in the facility.

22 G. The information to develop the energy baseline shall be derived  
23 from actual energy measurements or shall be calculated from energy  
24 measurements at the facility where energy cost savings measures are to be  
25 installed or implemented. The measurements shall be taken in the year  
26 preceding the installation or implementation of energy cost savings measures.

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

30 I. A school district, or two or more school districts, may enter into  
31 an installment payment contract or lease-purchase agreement with a qualified  
32 provider for the purchase and installation or implementation of energy cost  
33 savings measures. The guaranteed energy cost savings contract may provide for  
34 payments over a period of not more than the expected life of the energy cost  
35 savings measures implemented or twenty-five years, whichever is shorter. The  
36 contract shall provide that all payments, except obligations on termination  
37 of the contract before its expiration, shall be made over time.

38 J. The guaranteed energy cost savings contract shall include a written  
39 guarantee of the qualified provider that either the energy or operational  
40 costs savings, or both, will meet or exceed the costs of the energy cost  
41 savings measures over the expected life of the energy cost savings measures  
42 implemented or within twenty-five years, whichever is shorter. The qualified  
43 provider shall reimburse the school district for any shortfall of guaranteed  
44 energy cost savings on an annual basis.

1 K. The school district may obtain any required financing as part of  
2 the original competitive sealed proposal process.

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

6 M. When selecting subcontractors to perform construction work, the  
7 qualified provider is required to make public information in the  
8 subcontractor's bids only if the qualified provider is awarded the guaranteed  
9 energy savings contract by the school district.

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

11 O. For the purposes of this section:

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

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

20 3. "Energy cost savings measure" means a training program or facility  
21 alteration designed to reduce energy consumption or operating costs and may  
22 include one or more of the following:

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

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

28 (c) Automated or computerized energy control systems.

29 (d) Heating, ventilating or air conditioning system modifications or  
30 replacements.

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

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

38 (g) Energy recovery systems.

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

40 (i) Any life safety measures that provide long-term operating cost  
41 reductions and that comply with state and local codes.

42 (j) Implementing operation programs through education, training and  
43 software that reduce the operating costs.

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

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

4           6. "Qualified provider" means a person or a business experienced in  
5 designing, implementing or installing energy cost savings measures.