HOUSE BILL 21-1286

A BILL FOR AN ACT

CONCERNING MEASURES TO IMPROVE ENERGY EFFICIENCY, AND, IN CONNECTION THEREWITH, REQUIRING OWNERS OF LARGE BUILDINGS TO COLLECT AND REPORT ON ENERGY-USE BENCHMARKING DATA AND COMPLY WITH PERFORMANCE STANDARDS RELATED TO ENERGY AND GREENHOUSE GAS EMISSIONS AND MODIFYING STATUTORY REQUIREMENTS REGARDING ENERGY PERFORMANCE CONTRACTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment. Capital letters or bold & italic numbers indicate new material to be added to existing statute. Dashes through the words indicate deletions from existing statute.
Section 1 of the bill requires owners of certain large buildings (covered buildings), on an annual basis, to collect and report to the Colorado energy office (office) the covered building's energy use. The bill establishes a process requiring certain electric and gas utilities to provide energy-use data to a covered building owner when requested by the covered building owner.

Section 1 also requires that, on or before June 1, 2027, a covered building owner demonstrate that, in 2026, the covered building met performance standards set forth in the bill. A covered building owner must demonstrate compliance with the performance standards every 5 years after June 1, 2027. The air quality control commission (commission) is required to adopt rules in 2026 or 2027 that extend or modify the performance standards. Thereafter, the commission may, as the commission deems necessary, modify the performance standards by rule.

Section 2 requires the office to assist covered building owners with the reporting requirements set forth in section 1 by:

- Creating a database of covered buildings and owners required to comply with section 1;
- Developing publicly available, digitally interactive maps and lists showing the energy-use and performance-standard data reported;
- Coordinating with any local government that implements its own energy benchmarking requirements or energy performance program, including coordination of reporting requirements; and
- Collecting an annual fee from owners of covered buildings of $100 per covered building. The office is required to transfer the fees collected to the state treasurer, who will credit the fees to the climate change mitigation and adaptation fund (fund) created in section 2.

Section 3 imposes penalties for violations of section 1, ranging from $500 to $5,000, depending on whether the violations are first violations or subsequent violations, and requires that the civil penalty payments be credited to the fund. Certain subsequent violations are also subject to a penalty of 2 cents per square foot of gross floor area of the covered building for each day that the violations continue.

Section 4 modifies the definition of an "energy performance contract" that a governing body of a municipality, county, special district, or school district (board) enters into for evaluation, recommendations, or implementation of energy-saving measures to remove requirements that a board's payment for goods and services pursuant to the contract be made within a certain number of years of the contract's execution.
Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add 25-7-142 as follows:

25-7-142. Energy benchmarking - data collection and access - utility requirements - performance standards - rules - reports - definitions - legislative declaration. (1) Legislative declaration. The general assembly finds, determines, and declares that the regulation of building performance is a matter of statewide concern because:

(a) As of 2020, buildings represented a significant source of greenhouse gas pollution in the state of Colorado;

(b) Energy consumption and greenhouse gas emissions associated with a building produce impacts far beyond its walls and the boundaries of the local government within which the building is located, including costs to utility ratepayers for increased energy production, community health costs associated with air pollution, and broader societal costs of anthropogenic climate change;

(c) Large buildings represent a disproportionate amount of the energy use and greenhouse gas emissions in the state, yet building tenants that pay those energy costs often lack the ability to implement building upgrades that could improve performance, reduce emissions, and reduce those costs;

(d) The commission has both the statutory authority and obligation to require a reduction of greenhouse gas emissions in the state in every sector including buildings;

(e)(I) Benchmarking and building performance standards
WILL SUPPORT JOB GROWTH IN COLORADO. ACCORDING TO THE UNITED STATES CLIMATE ALLIANCE, BEFORE JANUARY 1, 2020, THE FASTEST GROWING CLEAN ENERGY INDUSTRIES IN COLORADO INCLUDED:

(A) TRADITIONAL HEATING, VENTILATION, AND AIR CONDITIONING, TOTALING TEN THOUSAND FOUR HUNDRED THIRTY-EIGHT JOBS; AND

(B) ENERGY STAR AND EFFICIENT LIGHTING, TOTALING ELEVEN THOUSAND ONE HUNDRED FIFTY-SIX JOBS.

(II) ADDITIONALLY, ANALYSIS CONDUCTED BY ADVANCED ENERGY ECONOMY IDENTIFIED MORE THAN SIXTY THOUSAND ADVANCED ENERGY JOBS IN COLORADO, WITH MORE THAN FIFTY PERCENT OF THOSE JOBS IN ENERGY EFFICIENCY.

(f) THE STATE OF COLORADO PROVIDES MANY LOW- AND NO-COST OPTIONS FOR COLORADO PROPERTY OWNERS TO FINANCE BUILDING PERFORMANCE IMPROVEMENTS, INCLUDING:

(I) PROPERTY-ASSESSED CLEAN ENERGY FINANCING THAT THE COLORADO NEW ENERGY IMPROVEMENT DISTRICT CREATED IN SECTION 32-20-104 PROVIDES, WHEREBY QUALIFYING ENERGY EFFICIENCY AND RENEWABLE ENERGY IMPROVEMENTS ARE PAID BACK VIA AN ASSESSMENT ON ANNUAL PROPERTY TAXES; AND

(II) PERFORMANCE CONTRACTING, WHEREBY IMPROVEMENTS ARE PAID FOR BY CONTRACTUALLY GUARANTEED SAVINGS FROM EFFICIENCY UPGRADES;

(g) MANY PUBLIC UTILITIES IN THE STATE ALSO PROVIDE TECHNICAL ASSISTANCE AND FINANCIAL INCENTIVES TO HELP PROPERTY OWNERS IMPLEMENT BUILDING PERFORMANCE IMPROVEMENTS; AND

(h) IT IS IN THE INTEREST OF THE STATE TO:

(I) ESTABLISH A PROGRAM TO HELP COLORADO CITIZENS
UNDERSTAND AND TRACK ENERGY USE AND GREENHOUSE GAS EMISSIONS FROM LARGE BUILDINGS; AND

(II) ENACT PERFORMANCE STANDARDS NECESSARY TO MEET STATE GREENHOUSE-GAS-EMISSION-REDUCTION GOALS.

(2) Definitions. As used in this section, unless the context otherwise requires:

(a) "AGGREGATED DATA" MEANS ELECTRIC OR GAS METER DATA FROM WHICH ANY UNIQUE IDENTIFIER OR OTHER PERSONAL INFORMATION HAS BEEN REMOVED AND THAT A QUALIFYING UTILITY COLLECTS AND AGGREGATES IN AT LEAST MONTHLY INTERVALS FOR AN ENTIRE COVERED BUILDING.

(b) "AGGREGATION THRESHOLD" MEANS, FOR EACH QUALIFYING UTILITY, THE MINIMUM NUMBER OF CUSTOMER ACCOUNTS ASSOCIATED WITH A COVERED BUILDING FOR WHICH THE QUALIFYING UTILITY MAY PROVIDE THE OWNER OF THE COVERED BUILDING WITH AGGREGATED DATA UPON REQUEST WITHOUT REQUIRING EACH CUSTOMER'S CONSENT TO HAVE THE CUSTOMER'S ENERGY-USE DATA ACCESSED OR SHARED.

(c) "ANSI" MEANS THE AMERICAN NATIONAL STANDARDS INSTITUTE OR ITS SUCCESSOR ORGANIZATION.

(d) "ASHRAE" MEANS THE AMERICAN SOCIETY OF HEATING, REFRIGERATING, AND AIR-CONDITIONING ENGINEERS OR ITS SUCCESSOR SOCIETY.

(e) "BASELINE YEAR" MEANS A YEAR TO WHICH A PERFORMANCE YEAR IS COMPARED, STARTING IN 2021 AND CONTINUING EVERY FIVE YEARS THEREAFTER.

(f) "BENCHMARK" MEANS TO INPUT BENCHMARKING DATA INTO A BENCHMARKING TOOL TO MEASURE AND ASSESS THE ENERGY
PERFORMANCE AND GREENHOUSE GAS POLLUTION FOR A COVERED BUILDING FOR THE REPORTING YEAR.

(g) EXCEPT AS THE COMMISSION MAY MODIFY BY RULE PURSUANT TO SUBSECTION (7) OF THIS SECTION, "BENCHMARKING DATA" MEANS THE INFORMATION RELATED TO A COVERED BUILDING THAT IS INPUT INTO OR CALCULATED BY A BENCHMARKING TOOL AND INCLUDES, AT A MINIMUM:

(I) A PHYSICAL DESCRIPTION OF THE COVERED BUILDING AND DESCRIPTIONS OF ITS OPERATIONAL CHARACTERISTICS, INCLUDING:

(A) THE NAME OF THE COVERED BUILDING, IF ANY;
(B) THE ADDRESS OF THE COVERED BUILDING;
(C) THE PRIMARY USES OF THE COVERED BUILDING;
(D) THE COVERED BUILDING'S GROSS FLOOR AREA; AND
(E) THE YEARS IN WHICH THE COVERED BUILDING HAS BEEN CERTIFIED BY ENERGY STAR AND THE MOST RECENT DATE OF CERTIFICATION, IF APPLICABLE; AND

(II) DATA GENERATED BY THE BENCHMARKING TOOL, INCLUDING:

(A) THE ENERGY STAR SCORE, IF AVAILABLE;
(B) MONTHLY ENERGY USE BY FUEL TYPE;
(C) SITE AND SOURCE ENERGY-USE INTENSITY;
(D) WEATHER-NORMALIZED SITE AND SOURCE ENERGY-USE INTENSITY;
(E) CONFIRMATION THAT DATA QUALITY HAS BEEN CHECKED;
(F) ANNUAL MAXIMUM ELECTRICITY DEMAND, IN KILOWATTS;
(G) IF AVAILABLE FOR REPORTING THROUGH THE BENCHMARKING TOOL, MONTHLY PEAK ELECTRICITY DEMAND; AND
(H) GREENHOUSE GAS EMISSIONS, INCLUDING TOTAL, INDIRECT, AND DIRECT EMISSIONS.
(h) EXCEPT AS THE COMMISSION MAY MODIFY BY RULE PURSUANT TO SUBSECTION (7) OF THIS SECTION, "BENCHMARKING TOOL" MEANS THE ENERGY STAR PORTFOLIO MANAGER® OR A SUCCESSOR ONLINE RESOURCE USED TO TRACK AND ASSESS THE PERFORMANCE OF CERTAIN PROPERTIES RELATIVE TO SIMILAR PROPERTIES.

(i) "BIOMEDICAL RESEARCH LABORATORY" MEANS A SCIENTIFIC LABORATORY USED TO CONDUCT RESEARCH RELATING TO BOTH BIOLOGY AND MEDICINE.

(j) "CAMPUS" MEANS TWO OR MORE ADJACENT BUILDINGS THAT ARE OWNED AND OPERATED BY THE SAME PERSON AND HAVE A SINGLE, SHARED PRIMARY FUNCTION.

(k) "COLORADO ENERGY OFFICE" OR "OFFICE" MEANS THE COLORADO ENERGY OFFICE CREATED IN SECTION 24-38.5-101.

(l) "CORRECTIONAL FACILITY" MEANS:

(I) A CORRECTIONAL FACILITY, AS DEFINED IN SECTION 17-1-102 (1.7);

(II) A PRIVATE CONTRACT PRISON, AS DEFINED IN SECTION 17-1-102 (7.3);

(III) A LOCAL JAIL AS DEFINED IN SECTION 17-1-102 (7);

(IV) A MUNICIPAL JAIL AS AUTHORIZED IN SECTION 31-15-401 (1)(j); AND

(V) A JUVENILE DETENTION FACILITY GOVERNED BY PART 4 OF ARTICLE 2 OF TITLE 19.

(m) (I) EXCEPT AS THE COMMISSION MAY MODIFY BY RULE PURSUANT TO SUBSECTION (7) OF THIS SECTION, "COVERED BUILDING" MEANS A BUILDING COMPRISING A GROSS FLOOR AREA OF FIFTY THOUSAND SQUARE FEET OR MORE THAT IS OCCUPIED BY A SINGLE OCCUPANT OR
GROUP OF TENANTS.

(II) "COVERED BUILDING" DOES NOT INCLUDE:

(A) A STORAGE FACILITY OR STAND-ALONE PARKING GARAGE THAT LACKS HEATING AND COOLING;

(B) A BUILDING IN WHICH MORE THAN HALF OF THE GROSS FLOOR AREA IS USED FOR MANUFACTURING, INDUSTRIAL, OR AGRICULTURAL PURPOSES; OR

(C) A SINGLE-FAMILY HOME, DUPLEX, OR TRIPLEX.

(n) "ENERGY STAR" MEANS THE FEDERAL PROGRAM AUTHORIZED BY 42 U.S.C. SEC. 6294a, AS AMENDED, TO HELP CUSTOMERS, BUSINESSES, AND INDUSTRY SAVE MONEY AND PROTECT THE ENVIRONMENT THROUGH THE ADOPTION OF ENERGY-EFFICIENT PRODUCTS AND PRACTICES.

(o) "ENERGY STAR SCORE" MEANS THE ONE-TO-ONE-HUNDRED NUMERIC RATING GENERATED BY THE ENERGY STAR PORTFOLIO MANAGER® AS A MEASUREMENT OF A BUILDING'S ENERGY EFFICIENCY.

(p) "ENERGY-USE INTENSITY" MEANS A BUILDING'S ENERGY USE, EXPRESSED AS TOTAL SITE ENERGY USE PER SQUARE FOOT PER YEAR.

(q) "FINANCIAL HARDSHIP" MEANS THAT A PROPERTY IS EXPERIENCING AT LEAST ONE OF THE FOLLOWING CONDITIONS:

(I) THE PROPERTY HAS BEEN INCLUDED ON A CITY'S, COUNTY'S, OR CITY AND COUNTY'S ANNUAL TAX LIEN SALE LIST WITHIN THE PREVIOUS TWO YEARS;

(II) THE PROPERTY IS AN ASSET SUBJECT TO A COURT-APPOINTED RECEIVER THAT CONTROLS THE ASSET DUE TO FINANCIAL STRESS;

(III) THE PROPERTY IS OWNED BY A FINANCIAL INSTITUTION AS A RESULT OF A DEFAULT BY A BORROWER;

(IV) THE PROPERTY HAS BEEN ACQUIRED BY A DEED IN LIEU OF
FORECLOSURE;

(V) THE PROPERTY IS THE SUBJECT OF A SENIOR MORTGAGE SUBJECT TO A NOTICE OF DEFAULT; OR

(VI) DUE TO THE GOVERNOR DECLARING A DISASTER EMERGENCY PURSUANT TO SECTION 24-33.5-704 (4), THE PROPERTY, IN AT LEAST TWO OF THE PREVIOUS FIVE YEARS, GENERATED ANNUAL RENTAL INCOME OR REVENUE THAT TOTALS SIXTY PERCENT OR LESS OF THE FIVE-YEAR AVERAGE IMMEDIATELY PRECEDING THE DISASTER EMERGENCY DECLARATION.

(r) "GREENHOUSE GAS" HAS THE MEANING SET FORTH IN SECTION 25-7-140 (6).

(s) "GROSS FLOOR AREA" MEANS THE TOTAL BUILDING AREA, AS MEASURED FROM THE OUTSIDE SURFACE OF EACH EXTERIOR WALL OF THE BUILDING, INCLUDING ABOVE-GRADE AND BELOW-GRADE SPACE.

(t) "IES" MEANS THE ILLUMINATING ENGINEERING SOCIETY OR ITS SUCCESSOR SOCIETY.

(u) "LOCAL GOVERNMENT" MEANS A STATUTORY OR HOME RULE MUNICIPALITY, COUNTY, OR CITY AND COUNTY.

(v) "OWNER" MEANS A PERSON POSSESSING TITLE TO A PROPERTY OR THE PERSON'S DESIGNATED AGENT.

(w) "PERFORMANCE YEAR" MEANS THE YEAR IN WHICH PERFORMANCE STANDARDS ARE REQUIRED TO BE MET PURSUANT TO SUBSECTION (8) OF THIS SECTION, BEGINNING IN 2026 AND CONTINUING EVERY FIVE YEARS THEREAFTER UNTIL 2051.

(x) "QUALIFYING UTILITY" MEANS:

(I) AN ELECTRIC OR GAS UTILITY WITH FIVE THOUSAND OR MORE ACTIVE COMMERCIAL AND INDUSTRIAL SERVICE CONNECTIONS, ACCOUNTS,
OR CUSTOMERS IN THE STATE, INCLUDING:

(A) AN INVESTOR-OWNED ELECTRIC OR GAS UTILITY;
(B) A COOPERATIVE ELECTRIC ASSOCIATION; OR
(C) A MUNICIPALLY OWNED ELECTRIC OR GAS UTILITY; OR
(II) A NATURAL GAS SUPPLIER WITH FIVE OR MORE ACTIVE COMMERCIAL OR INDUSTRIAL CONNECTIONS, ACCOUNTS, OR CUSTOMERS IN THE STATE.

(y) "RENEWABLE ENERGY" MEANS ENERGY:
(I) THAT MEETS THE DEFINITION OF "ELIGIBLE ENERGY RESOURCES" SET FORTH IN SECTION 40-2-124 (1)(a);
(II) THAT, TO THE MAXIMUM EXTENT TECHNICALLY FEASIBLE AND LEGALLY ALLOWABLE, IS PRODUCED AS RETAIL DISTRIBUTED GENERATION, AS DEFINED IN SECTION 40-2-124 (1)(a)(VIII), WITH THE REMAINDER PRODUCED BY OFF-SITE SOURCES; AND
(III) FOR WHICH ITS RENEWABLE ENERGY CERTIFICATES HAVE BEEN RETIRED ON BEHALF OF THE COVERED BUILDING, AFTER BEING USED FOR COMPLIANCE WITH THE PERFORMANCE STANDARDS SET FORTH IN SUBSECTION (8) OF THIS SECTION.

(z) "RENEWABLE ENERGY CERTIFICATE" MEANS THE ENVIRONMENTAL ATTRIBUTES OF ONE MEGAWATT-HOUR OF RENEWABLE ENERGY.

(aa) "STATE INSTITUTION OF HIGHER EDUCATION":
(I) HAS THE MEANING SET FORTH IN SECTION 23-1-108 (7)(g)(II);
(II) INCLUDES THE AURARIA HIGHER EDUCATION CENTER, GOVERNED PURSUANT TO ARTICLE 70 OF TITLE 23; AND
(III) DOES NOT INCLUDE A BIOMEDICAL RESEARCH LABORATORY.

(bb) "TENANT" MEANS A PERSON THAT, PURSUANT TO A RENTAL
OR LEASE AGREEMENT, OCCUPIES OR HOLDS POSSESSION OF A BUILDING OR PART OF A BUILDING OR PREMISES.

(cc) "Unique identifier" means a customer's contact information displayed on a utility bill such as the customer's name, mailing address, telephone number, or e-mail address.

(dd) "Utility customer" means the building owner or tenant listed on the utility's records as the customer liable for payment of the utility service or additional charges assessed on the utility account.

(3) **Benchmarking requirements on owners.** (a) On or before December 1, 2022, and on or before June 1 of each subsequent year, the owner of a covered building shall submit a report of the benchmarking data for the previous calendar year to the office.

(b) Before providing a benchmarking report pursuant to subsection (3)(a) of this section, an owner shall run any automated data checking function of the benchmarking tool and correct any errors discovered.

(c) The following owners may comply with this subsection (3) collectively at the campus-wide level:

(I) The owner of multiple covered buildings that are part of a master metered group of buildings without submetering;

(II) The owner of a correctional facility; and

(III) The owner of a state institution of higher education.

(4) **Utility data requirements.** (a) On or before January 1, 2022, a qualifying utility shall:

(I) Establish an aggregation threshold that is four or
FEWER UTILITY CUSTOMER ACCOUNTS;

(II) Publish its aggregation threshold on its public website; and

(III) Upon request of an owner of a covered building, begin providing energy-use data to the owner.

(b) Energy-use data that a qualifying utility provides an owner pursuant to this subsection (4) must be:

(I) Available on, or able to be requested through, an easily navigable web portal or online request form using up-to-date standards for digital authentication, including single one-time passwords or multi-factor authentication;

(II) Provided to the owner within thirty days after receiving the owner's valid written or electronic request;

(III) Directly uploaded to the owner's benchmarking tool account, delivered in the spreadsheet template specified by the benchmarking tool, or delivered in another format approved by the office;

(IV) Provided to the owner on at least an annual basis until the owner revokes the request for energy-use data or sells the covered building; and

(V) Provided in accordance with this subsection (4), regardless of whether the owner is named on the utility account for the covered building.

(c) For covered buildings that do not meet the qualifying utility's aggregation threshold, and thus require utility customer consent to access or share energy-use data, the consent:
(I) May be in written or electronic form;
(II) May be provided in a lease agreement provision;
(III) Is valid until the utility customer revokes it; and
(IV) Is not required if a utility customer vacates the
covered building before explicitly denying the owner consent to
access and share the utility customer's energy-use data.

(5) **Benchmarking waivers and extensions of time.** (a) An
owner of a covered building may seek a waiver from the
benchmarking requirements set forth in subsection (3) of this
section if the owner submits documentation to, and receives
approval from, the office, which documentation establishes that
the covered building has met one or more of the following
conditions for the calendar year to be benchmarked:

(I) the covered building was unoccupied for at least
thirty consecutive days of the year;

(II) a demolition permit was issued for the entire covered
building;

(III) the covered building met one or more of the
conditions for financial hardship; or

(IV) the covered building does not meet a qualifying
utility's aggregation threshold, one or more of the utility
customers refused to provide the owner with permission to
access the utility customer's relevant energy-use data, the
owner provides proof to the office that it requested permission
from the utility customer or utility customers withholding
consent at least thirty days before the benchmarking report
was due, and the owner submits a plan to include an energy-use
DATA SHARING PERMISSION PROVISION IN THE NEXT LEASE RENEWAL.

(b) An owner of a covered building may request a time extension from the office to submit a benchmarking report if the owner submits documentation to the office demonstrating that, despite the owner's good-faith effort, the owner was unable to complete the benchmarking report in a timely manner because of the failure or refusal of a qualifying utility or a utility customer to provide the necessary information or permission, as applicable.

c) The office shall notify the division of all approved waivers and extensions of time, the approval of which is solely within the office's discretion.

d) Pursuant to subsection (7) of this section, the commission may, by rule, modify the requirements for obtaining a waiver or extension of time pursuant to this subsection (5).

(6) Requirements upon sale or lease of a covered building.

(a) At the time of listing a covered building or a portion of a covered building for sale or lease, the owner of the covered building shall furnish an electronic copy of reported benchmarking data from the previous calendar year or from the most recent twelve-month period of continuous occupancy to the following:

(I) Prospective buyers or lessees;

(II) Any brokers, as defined in section 12-10-201 (6), who make inquiry about the property; and

(III) Major commercial real estate listing services on which the property is listed.
(b) Upon receipt of the benchmarking data, a commercial real estate listing service that lists properties in the state shall include in the property’s listing, at a minimum, the property’s Energy Star score, if applicable, and the property’s energy-use intensity.

(c) If a covered building changes ownership, the former owner shall make available to the new owner the energy-use data; utility customer consent documentation, if any; and any other information about the property that is necessary to benchmark the covered building. The former owner shall transfer to the new owner both the record representing the covered building within the benchmarking tool and the request to a qualified utility for aggregated data. The new owner may request and receive from a qualifying utility the aggregated data necessary to fulfill benchmarking reporting requirements.

(7) Benchmarking rules. The commission may promulgate rules to implement the benchmarking program set forth in this section. Additionally, the commission may, by rule, modify the following:

(a) the provisions regarding waivers and extensions of time set forth in subsection (5) of this section;

(b) the definition of "benchmarking data", but only if the modified definition concerns data that:

(I) is capable of being recorded by the benchmarking tool;

and

(II) includes the Energy Star score, if applicable, and energy-use intensity;
(c) The benchmarking tool that owners are required to use to benchmark;

(d) Data verification requirements; and

(e) After June 1, 2029, the minimum gross floor area included in the definition of "covered building".

(8) Performance standard requirements. (a) To help achieve the statewide greenhouse-gas-emission-reduction targets set forth in section 25-7-102 (2)(g), the state shall implement performance standards for covered buildings.

(b) (I) Except as provided in subsection (8)(b)(II) of this section, on or before June 1 of a year following a performance year, an owner of a covered building shall submit to the office a report, in a form and manner determined by the office, demonstrating that, in the most recent performance year, the covered building met the performance standards set forth in subsection (8)(c) or (8)(d) of this section or, if the commission by rule modifies the performance standards pursuant to subsection (10) of this section, the modified performance standards set forth in the commission's rules.

(II) For a covered building owned by the state, a local government, a special district regulated under Title 32, a state institution of higher education, a school district created pursuant to Article 30 of Title 22, or a charter school authorized pursuant to Part 1 of Article 30.5 of Title 22, the owner need comply with the performance requirements set forth in this subsection (8) only if the owner completes work on a construction or renovation project that has an estimated cost
OF AT LEAST FIVE HUNDRED THOUSAND DOLLARS AND IMPACTS AT LEAST TWENTY-FIVE PERCENT OF THE COVERED BUILDING'S SQUARE FOOTAGE.

(c) For performance year 2026, an owner of a covered building shall demonstrate in accordance with the reporting requirement set forth in subsection (8)(b)(I) of this section that the covered building met one or more of the following performance standards or the performance standard set forth in subsection (8)(d) of this section:

(I) The covered building received an Energy Star score of:

(A) Seventy-five or higher; or

(B) Fifteen points higher than the Energy Star score that the covered building received during its most recent baseline year;

(II) The covered building's weather-normalized site and source energy-use intensity was reduced by at least fifteen percent compared to its performance during the most recent baseline year;

(III) The covered building's energy-use intensity met or surpassed:

(A) The sector-specific and climate-zone-specific target determined by the commission by rule; or

(B) If the commission has not yet promulgated a rule establishing the target described in subsection (8)(c)(III)(A) of this section, the twenty-fifth percentile sector-specific and climate-zone-specific target contained in the most recent edition of ANSI/ASHRAE/IES Standard 100-2018, "Energy Efficiency in Existing Buildings", or its successor standard; or
(IV) THE COVERED BUILDING IS A MIXED-USE PROPERTY AND THE
OWNER OF THE COVERED BUILDING SUBMITS PROOF THAT THE COVERED
BUILDING MEETS OR EXCEEDS THE ENERGY-USE INTENSITY STANDARD SET
FORTH IN SUBSECTION (8)(c)(III) OF THIS SECTION, AS DETERMINED BY A
WEIGHTED AVERAGE OF SQUARE FOOTAGE BY FUNCTION OR USE.

(d) AS AN ALTERNATIVE TO THE PERFORMANCE STANDARDS SET
FORTH IN SUBSECTION (8)(c) OF THIS SECTION, AN OWNER MAY COMPLY
WITH THE PERFORMANCE STANDARD REQUIREMENT FOR PERFORMANCE
YEAR 2026 BY DEMONSTRATING THAT, FOR AT LEAST FOUR OF THE FIVE
YEARS IMMEDIATELY AFTER THE MOST RECENT BASELINE YEAR, AT LEAST
FIFTY PERCENT OF THE COVERED BUILDING'S ELECTRICITY WAS
GENERATED FROM RENEWABLE ENERGY AND:

(I) THE COVERED BUILDING RECEIVED AN ENERGY STAR SCORE OF:

(A) SIXTY-FIVE OR HIGHER; OR

(B) TEN POINTS HIGHER THAN THE ENERGY STAR SCORE THAT THE
COVERED BUILDING RECEIVED DURING ITS MOST RECENT BASELINE YEAR;

(II) THE COVERED BUILDING'S WEATHER-NORMALIZED SITE AND
SOURCE ENERGY-USE INTENSITY WAS REDUCED BY AT LEAST TEN PERCENT
COMPARED TO ITS PERFORMANCE DURING THE MOST RECENT BASELINE
YEAR; OR

(III) THE COVERED BUILDING'S ENERGY-USE INTENSITY WAS
WITHIN TEN PERCENT OF:

(A) THE SECTOR-SPECIFIC AND CLIMATE-ZONE-SPECIFIC TARGET
dETERMINED BY THE COMMISSION BY RULE;

(B) IF THE COMMISSION HAS NOT YET PROMULGATED A RULE
ESTABLISHING THE TARGET DESCRIBED IN SUBSECTION (8)(d)(III)(A) OF
THIS SECTION, THE TWENTY-FIFTH PERCENTILE SECTOR-SPECIFIC AND
CLIMATE-ZONE-SPECIFIC TARGET CONTAINED IN ANSI/ASHRAE/IES
STANDARD 100-2018, "ENERGY EFFICIENCY IN EXISTING BUILDINGS", OR
ITS SUCCESSOR STANDARD; OR

(C) IF THE COVERED BUILDING IS A MIXED-USE PROPERTY, THE
SECTOR-SPECIFIC AND CLIMATE-ZONE-SPECIFIC TARGET DETERMINED BY
THE COMMISSION BY RULE OR, IF THE COMMISSION HAS NOT YET
PROMULGATED A RULE ESTABLISHING THE TARGET, BY THE STANDARD
REFERRED IN SUBSECTION (8)(d)(III)(B) OF THIS SECTION, AS
DETERMINED BY A WEIGHTED AVERAGE OF SQUARE FOOTAGE BY FUNCTION
OR USE.

(e) IN SUBMITTING A PERFORMANCE REPORT DEMONSTRATING
THAT A COVERED BUILDING HAS MET PERFORMANCE STANDARDS, THE
OWNER OF THE COVERED BUILDING MAY SUBSTITUTE A YEAR WITHIN TWO
YEARS BEFORE OR AFTER THE RELEVANT BASELINE YEAR AS THE YEAR TO
WHICH THE PERFORMANCE YEAR MAY BE COMPARED.

(f) THE FOLLOWING MAY COMPLY WITH THIS SUBSECTION (8)
COLLECTIVELY AT THE CAMPUS-WIDE LEVEL:

(I) THE OWNER OF MULTIPLE COVERED BUILDINGS THAT ARE PART
OF A MASTER METERED GROUP OF BUILDINGS WITHOUT SUBMETERING;

(II) THE OWNER OF A CORRECTIONAL FACILITY; AND

(III) THE OWNER OF A STATE INSTITUTION OF HIGHER EDUCATION.

(9) **Performance standard waivers or extensions of time.**

(a) FOR PERFORMANCE YEAR 2026 AND, IF EXTENDED BY THE
COMMISSION BY RULE PURSUANT TO SUBSECTION (10) OF THIS SECTION,
FOR SUBSEQUENT PERFORMANCE YEARS, THE OFFICE SHALL GRANT AN
OWNER OF A COVERED BUILDING A WAIVER FROM THE REQUIREMENT TO
MEET THE PERFORMANCE STANDARDS BY DEMONSTRATING IN THE
PERFORMANCE REPORT THAT:

(I) IN THE MOST RECENT FIVE YEARS, THE OFFICE GRANTED A WAIVER FROM BENCHMARKING REPORTING FOR THE COVERED BUILDING IN AT LEAST TWO OF THE FIVE YEARS;

(II) IN AT LEAST TWO OF THE MOST RECENT FIVE YEARS, THE COVERED BUILDING MET ONE OR MORE OF THE CONDITIONS FOR FINANCIAL HARDSHIP;

(III) THE COVERED BUILDING IS A TENANT-OWNED MULTIFAMILY RESIDENTIAL BUILDING;

(IV) AT LEAST SIXTY-SIX PERCENT OF THE RESIDENTIAL TENANTS IN THE COVERED BUILDING HAVE A HOUSEHOLD INCOME THAT IS LESS THAN EIGHTY PERCENT OF THE AREA MEDIAN INCOME;

(V) THE COVERED BUILDING IS DESIGNATED A HISTORIC PROPERTY UNDER FEDERAL, STATE, OR LOCAL LAW OR REGISTRY AND:

(A) THE COVERED BUILDING WAS BUILT BEFORE 1950;

(B) THE OWNER OF THE COVERED BUILDING SUBMITS PROOF THAT THE OWNER CANNOT PERFORM ANY ADDITIONAL ENERGY EFFICIENCY UPGRDES IN WHICH THE INITIAL COSTS OF THE UPGRDES COULD BE RECOVERED FROM ENERGY BILL SAVINGS IN FEWER THAN FIVE YEARS WITHOUT JEOPARDIZING THE HISTORIC DESIGNATION OR STRUCTURAL INTEGRITY OF THE PROPERTY; AND

(C) THE OWNER SUBMITS PROOF THAT THE COVERED BUILDING HAS BEEN COMMISSIONED OR RECOMMISSIONED SINCE THE MOST RECENT BASELINE YEAR IN ACCORDANCE WITH ANSI/ASHRAE/IES STANDARD 202-2018, "COMMISSIONING PROCESS FOR BUILDINGS AND SYSTEMS", OR ITS SUCCESSOR STANDARD; OR

(VI) IN OR AFTER THE MOST RECENT BASELINE YEAR, THE
COVERED BUILDING RECEIVED A CERTIFICATE OF OCCUPANCY AND THE OWNER SUBMITS PROOF TO THE OFFICE THAT THE COVERED BUILDING WAS CONSTRUCTED TO MEET OR SURPASS THE EFFICIENCY LEVELS IN ONE OF THE FOLLOWING:

(A) ONE OF THE TWO MOST RECENT EDITIONS OF THE INTERNATIONAL CODE COUNCIL'S, OR ITS SUCCESSOR ORGANIZATION'S, INTERNATIONAL ENERGY CONSERVATION CODE;

(B) ANSI/ASHRAE/IES STANDARD 90.1-2019, "ENERGY STANDARD FOR BUILDINGS EXCEPT LOW-RISE RESIDENTIAL BUILDINGS", OR ITS SUCCESSOR STANDARD; OR

(C) ANSI/ASHRAE STANDARD 90.2-2018, "ENERGY-EFFICIENT DESIGN OF LOW-RISE RESIDENTIAL BUILDINGS", OR ITS SUCCESSOR STANDARD OR CODE.

(b) AN OWNER OF A COVERED BUILDING MAY REQUEST AN EXTENSION OF TIME FROM THE OFFICE IF THE OWNER SUBMITS DOCUMENTATION TO THE OFFICE DEMONSTRATING THAT:

(I) AFTER THE MOST RECENT BASELINE YEAR, THE BENCHMARKING TOOL CONDUCTED A LARGE-SCALE RECALIBRATION, RENDERING THE COVERED BUILDING'S ENERGY STAR SCORE INSUFFICIENT TO MEET THE PERFORMANCE STANDARDS SET FORTH IN SUBSECTION (8) OF THIS SECTION;

(II) THE PRIMARY FUNCTION OF THE BUILDING HAS CHANGED SINCE THE LAST PERFORMANCE YEAR; OR

(III) THE BUILDING CHANGED OWNERSHIP SINCE THE MOST RECENT BASELINE YEAR.

(10) Performance standard rules - task force recommendations for implementation - repeal. (a) (I) No later than
November 1, 2021, the Director of the Office shall appoint, convene, and facilitate a task force to develop and provide consensus recommendations to the Commission, the General Assembly, and the Governor on modifications to the implementation of benchmarking and performance standards.

(II) The task force may consider recommendations related to:

(A) Workforce availability and development related to building energy performance;

(B) Financial and nonfinancial costs and benefits of upgraded building energy performance;

(C) Availability of programs, technical assistance, and incentives to support building owners, utilities, and local governments;

(D) Opportunities to improve commercial building energy use in Colorado; and

(E) Future actions that the Commission and the General Assembly may take related to implementing the benchmarking and performance standards.

(III) The task force shall develop and deliver to the Commission, the General Assembly, and the Governor:

(A) Interim consensus recommendations no later than December 1, 2022; and

(B) Final consensus recommendations no later than December 1, 2024.

(IV) The task force consists of the following members:

(A) The Director of the Office or the Director’s designee;
(B) The Director of Environmental Programs in the Department of Public Health and Environment or the Director's designee;

(C) Two members who are building owners or who represent building owners, with one representing commercial buildings and one representing multifamily residential buildings;

(D) Two members who have direct experience in, or are members of organizations representing workers in, mechanical, plumbing, or electrical work;

(E) Two members representing design professionals, developers, building engineers, construction organizations, or building contractors;

(F) Two members of environmental conservation or environmental justice groups with experience in energy efficiency or the built environment;

(G) One member from a local government that has enacted or adopted a benchmarking or building energy performance ordinance or resolution; and

(H) One member from a local government that has not enacted or adopted a benchmarking or building energy performance ordinance or resolution.

(V) This subsection (10)(a) is repealed, effective July 1, 2025.

(b) On or after December 1, 2026, but no later than December 1, 2027, the commission, after consultation with affected stakeholders, shall promulgate rules to either extend
OR MODIFY THE PERFORMANCE STANDARDS, WAIVERS, OR EXTENSIONS OF
TIME SET FORTH IN SUBSECTIONS (8)(c), (8)(d), (9)(a), AND (9)(b) OF THIS
SECTION TO REQUIRE ALL COVERED BUILDINGS, IN THE AGGREGATE, TO
ACHIEVE OR EXCEED TWENTY PERCENT ENERGY AND GREENHOUSE GAS
REDUCTIONS AS MEASURED IN 2031 COMPARED TO THE ENERGY AND
GREENHOUSE GAS LEVELS IN 2021.

(c) On or before December 1 of each subsequent baseline
year through 2047, the commission, after consultation with
affected stakeholders, shall promulgate rules to extend or
modify the performance standards to achieve or exceed emission
reductions that are consistent with the statewide
greenhouse-gas-emission-reduction targets set forth in section
25-7-102 (2)(g).

(d) The calculation of greenhouse gas reductions
pursuant to this subsection (10) must not include savings from
system-wide decarbonization of electricity or natural gas
utility grids, but the reductions may include savings from
utility or local energy efficiency programs.

(e) The commission's rules must not unduly burden any of
the following buildings:

(I) High-performance buildings;

(II) Tenant-owned multifamily residential buildings;

(III) Residential buildings primarily used to house
low-income households;

(IV) Properties built before 1950 that have been
designated historic properties; or

(V) Buildings owned by a local government.
(f) On or after June 1, 2029, but before June 1, 2030, the commission shall commence a rule-making proceeding to consider reducing the size threshold of a covered building for purposes of meeting the performance standards set forth in subsection (8) of this section or rules promulgated pursuant to this subsection (10). The commission may adopt subsequent rules to lower the size threshold.

(g) The commission shall not adopt rules to rescind or modify the exemptions for local governments and districts from payment of the annual fee, as set forth in section 24-38.5-110 (1)(e)(II), or the exemptions for local governments and districts from payment of civil penalties, as set forth in section 25-7-122 (1)(i).

(11) Saving clause. This section does not restrict:

(a) The ability of a qualifying utility to provide incentives or other energy efficiency program services for covered buildings;

(b) The ability of an investor-owned utility to take credit, as deemed appropriate by the public utilities commission, for energy or greenhouse gas emission savings achieved for covered buildings;

(c) The ability of a qualified utility to set an aggregation threshold that is less than four; or

(d) A local government from adopting or implementing an ordinance or resolution that imposes more stringent benchmarking or performance standard requirements.

SECTION 2. In Colorado Revised Statutes, 24-38.5-102.4,
amend (2)(b)(VII); and add (2)(b)(VII.5) as follows:

24-38.5-102.4. Energy fund - creation - use of fund - definitions - repeal. (2) (b) The Colorado energy office may expend money from the energy fund:

(VII) To educate the general public on energy issues and opportunities; and

(VII.5) TO IMPLEMENT THE BUILDING PERFORMANCE PROGRAM DEFINED IN SECTION 24-38.5-110 (2)(b) AND DESCRIBED IN THAT SECTION AND SECTION 25-7-142; AND

SECTION 3. In Colorado Revised Statutes, add 24-38.5-102.6 and 24-38.5-110 as follows:

24-38.5-102.6. Climate change mitigation and adaptation fund - creation - use. (1) THE CLIMATE CHANGE MITIGATION AND ADAPTATION FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF:

(a) Civil penalties credited to the fund pursuant to section 25-7-122 (1)(i)(III);

(b) Building performance program fees credited to the fund pursuant to section 24-38.5-110 (1)(e), which fees must be separately accounted for in the fund;

(c) Gifts, grants, and donations made to the Colorado energy office to help finance its administration of climate change mitigation or adaptation programs and policies;

(d) Any money that the general assembly may appropriate or transfer to the fund; and

(e) Any other money credited to the fund.

(2) Money in the fund is continuously appropriated to the
COLORADO ENERGY OFFICE FOR THE PURPOSE OF FINANCING AND
ADMINISTERING PROGRAMS AND POLICIES DEVELOPED TO MITIGATE OR
ADAPT TO CLIMATE CHANGE THROUGHOUT THE STATE.

(3) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
FUND TO THE FUND.

24-38.5-110. Building performance program - duties of the
office - county assessor records database - fees - definitions. (1) The
COLORADO ENERGY OFFICE SHALL IMPLEMENT A BUILDING PERFORMANCE
PROGRAM AS FOLLOWS:

(a) BASED ON COUNTY ASSESSOR RECORDS AND OTHER AVAILABLE
SOURCES OF INFORMATION, THE OFFICE SHALL CREATE A DATABASE OF
COVERED BUILDINGS AND OF OWNERS REQUIRED TO COMPLY WITH THE
BUILDING PERFORMANCE PROGRAM.

(b) UPON REQUEST OF THE OFFICE, A COUNTY ASSESSOR SHALL, IF
FEASIBLE USING EXISTING RESOURCES, PROVIDE READILY AVAILABLE
PROPERTY DATA FROM EXISTING RECORDS TO THE OFFICE AS NECESSARY
FOR IMPLEMENTATION OF THIS SECTION.

(c) THE OFFICE SHALL MAKE PUBLICLY AVAILABLE, THROUGH
DIGITALLY INTERACTIVE MAPS, LISTS, OR OTHER TECHNOLOGY AS
DETERMINED BY THE OFFICE, BENCHMARKING DATA FOR ALL COVERED
BUILDINGS THAT HAVE REPORTED IN EACH YEAR PURSUANT TO SECTION
25-7-142 (3). THE PUBLICLY AVAILABLE DATA MUST NOT INCLUDE ANY
CONTACT INFORMATION FOR A COVERED BUILDING THAT IS NOT
OTHERWISE PUBLICLY AVAILABLE.

(d) THE OFFICE SHALL COORDINATE WITH ANY LOCAL
GOVERNMENT THAT IMPLEMENTS ITS OWN ENERGY BENCHMARKING OR
ENERGY PERFORMANCE PROGRAM, INCLUDING THE COORDINATION OF REPORTING REQUIREMENTS.

(e) (I) Except as provided in subsection (1)(e)(II) of this section, to finance the Office's administration of the building performance program, the Office shall collect from each owner of a covered building an annual fee of one hundred dollars per covered building. The Office shall transfer the fees collected to the State Treasurer, who shall credit them to the climate change mitigation and adaptation fund created in section 24-38.5-102.6.

(II) The following entities are exempt from paying the annual fee described in subsection (1)(e)(I) of this section:

(A) A statutory or home rule city, city and county, or county; or

(B) A district or special district governed by title 32.

(2) As used in this section, unless the context otherwise requires:

(a) "Benchmarking data" has the meaning set forth in section 25-7-142 (2)(g).

(b) "Building performance program" means the benchmarking and performance standard requirements set forth in section 25-7-142 (3) and (8).

(c) "Colorado energy office" or "office" means the Colorado energy office created in section 24-38.5-101.

(d) "Covered building" has the meaning set forth in section 25-7-142 (2)(m).

(e) "Owner" has the meaning set forth in section 25-7-142.
SECTION 4. In Colorado Revised Statutes, 25-7-122, add (1)(i) as follows:

25-7-122. Civil penalties - rules - definitions. (1) Upon application of the division, the division may collect penalties as determined under this article 7 by instituting an action in the district court for the district in which the air pollution source affected is located, in accordance with the following provisions:

(i) (I) On and after January 1, 2024, and except as provided in subsection (1)(i)(II) of this section, an owner of a covered building that violates section 25-7-142 (3) or (6) is subject to a civil penalty of up to five hundred dollars for a first violation and up to two thousand dollars for each subsequent violation.

An owner of a covered building that violates section 25-7-142 (8) is subject to a civil penalty of up to two thousand dollars for a first violation and up to five thousand dollars for a subsequent violation.

(II) The division shall not assess a civil penalty with regard to a building owned by:

(A) the state;

(B) a statutory or home rule city, city and county, or county;

(C) a school district as defined in section 22-11-103 (29);

(D) a state institution of higher education as defined in section 23-1-108 (7)(g)(II), but including the Auraria higher education center governed pursuant to article 70 of title 23; or

(E) a district or special district governed by title 32.
(III) **Notwithstanding section 25-7-129, the division shall transmit civil penalties collected pursuant to this subsection (1)(i) to the state treasurer, who shall credit them to the climate change mitigation and adaptation fund created in section 24-38.5-102.6.**

(IV) **As used in this subsection (1)(i):**

(A) "Covered building" has the meaning set forth in section 25-7-142 (2)(m).

(B) "Gross floor area" has the meaning set forth in section 25-7-142 (2)(s).

(C) "Owner" has the meaning set forth in section 25-7-142 (2)(v).

**SECTION 5.** In Colorado Revised Statutes, 29-12.5-101, amend (3) introductory portion, (3)(f), and (3)(h); and repeal (3)(g) as follows:

29-12.5-101. Definitions. As used in this article 12.5:

(3) "Energy performance contract" means a contract for evaluations, recommendations, or implementation of one or more energy saving measures designed to produce utility costs savings, operation and maintenance cost savings, or vehicle fleet operational and fuel cost savings, which contract:

(f) Requires such a board, upon termination or expiration of the contract, to return to such the party any moneys money that the party deposited with such the board that are and did not forfeit forfeit to such the board pursuant to paragraph (e) of this subsection (3) subsection (3)(e) of this section; and

(g) Requires that not less than one-tenth of all payments, except payments for maintenance and repairs and obligations on the termination
of the contract prior to expiration, to be made by such board shall be made within two years from the date of execution of the contract; and

(h) Requires that the remaining such payments to be made by such board shall be made within twelve years from the date of execution of the contract; except that the maximum term of the payments shall be less than the cost-weighted average useful life of energy cost-savings equipment for which the contract is made, not to exceed twenty-five years.

SECTION 6. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.