

CHAPTER 291

GOVERNMENT - STATE

HOUSE BILL 01-1381

BY REPRESENTATIVE(S) Grossman, Miller, Scott, Smith, Veiga, Borodkin, Boyd, Coleman, Dean, Decker, Garcia, Hefley, Jameson, Larson, Mace, Plant, Romanoff, Sanchez, Stafford, Tapia, Weddig, Williams S., and Witwer;
also SENATOR(S) Hagedorn, Entz, and Tupa.

AN ACT

CONCERNING UTILITY COST-SAVINGS MEASURES THAT MAY BE FINANCED BY GOVERNMENTAL AGENCIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 30 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 20
UTILITY COST-SAVINGS MEASURES**

24-30-2001. Definitions. AS USED IN THIS PART 20, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ENERGY PERFORMANCE CONTRACT" MEANS A CONTRACT FOR EVALUATIONS, RECOMMENDATIONS, OR IMPLEMENTATION OF ONE OR MORE UTILITY COST-SAVINGS MEASURES DESIGNED TO PRODUCE UTILITY COST SAVINGS OR OPERATION AND MAINTENANCE COST SAVINGS, WHICH CONTRACT:

(a) SETS FORTH SAVINGS ATTRIBUTABLE TO THE CALCULATED UTILITY COST SAVINGS OR OPERATION AND MAINTENANCE COST SAVINGS FOR EACH YEAR DURING THE CONTRACT PERIOD;

(b) PROVIDES THAT THE AMOUNT OF ACTUAL SAVINGS FOR EACH YEAR DURING THE CONTRACT PERIOD SHALL EXCEED ANNUAL CONTRACT PAYMENTS, INCLUDING MAINTENANCE COSTS, TO BE MADE DURING SUCH YEAR BY THE STATE AGENCY CONTRACTING FOR THE UTILITY COST-SAVINGS MEASURES;

(c) REQUIRES THE PARTY ENTERING INTO THE ENERGY PERFORMANCE CONTRACT

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

WITH THE STATE AGENCY TO PROVIDE A WRITTEN GUARANTEE THAT THE SUM OF UTILITY COST SAVINGS AND OPERATION AND MAINTENANCE COST SAVINGS FOR EACH YEAR DURING THE FIRST THREE YEARS OF THE CONTRACT PERIOD SHALL NOT BE LESS THAN THE CALCULATED SAVINGS FOR THAT YEAR DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1); AND

(d) REQUIRES PAYMENTS BY A STATE AGENCY TO BE MADE WITHIN TWELVE YEARS AFTER THE DATE OF THE EXECUTION OF THE CONTRACT; EXCEPT THAT THE MAXIMUM TERM OF THE PAYMENTS SHALL BE LESS THAN THE COST-WEIGHTED AVERAGE USEFUL LIFE OF UTILITY COST-SAVINGS EQUIPMENT FOR WHICH THE CONTRACT IS MADE, NOT TO EXCEED TWENTY-FIVE YEARS.

(2) "OPERATION AND MAINTENANCE COST SAVINGS" MEANS A MEASURABLE DECREASE IN OPERATION AND MAINTENANCE COSTS THAT IS A DIRECT RESULT OF THE IMPLEMENTATION OF ONE OR MORE UTILITY COST-SAVINGS MEASURES. SUCH SAVINGS SHALL BE CALCULATED IN COMPARISON WITH AN ESTABLISHED BASELINE OF OPERATION AND MAINTENANCE COSTS.

(3) "SHARED-SAVINGS CONTRACT" MEANS A CONTRACT FOR ONE OR MORE UTILITY COST-SAVINGS MEASURES THAT DO NOT INVOLVE CAPITAL EQUIPMENT PROJECTS, WHICH CONTRACT:

(a) PROVIDES THAT ALL PAYMENTS TO BE MADE BY THE STATE AGENCY CONTRACTING FOR THE UTILITY COST-SAVINGS MEASURES SHALL BE A STATED PERCENTAGE OF CALCULATED SAVINGS OF ENERGY COSTS ATTRIBUTABLE TO SUCH MEASURES OVER A DEFINED PERIOD OF TIME AND THAT SUCH PAYMENTS SHALL BE MADE ONLY TO THE EXTENT THAT SUCH SAVINGS OCCUR; EXCEPT THAT THIS PARAGRAPH (a) SHALL NOT APPLY TO PAYMENTS FOR MAINTENANCE AND REPAIRS AND OBLIGATIONS ON TERMINATION OF THE CONTRACT PRIOR TO ITS EXPIRATION;

(b) PROVIDES FOR AN INITIAL CONTRACT PERIOD OF NO LONGER THAN TEN YEARS; AND

(c) REQUIRES NO ADDITIONAL CAPITAL INVESTMENT OR CONTRIBUTION OF FUNDS.

(4) "STATE AGENCY" MEANS A DEPARTMENT OR INSTITUTION OF THIS STATE, INCLUDING INSTITUTIONS OF HIGHER EDUCATION.

(5) "UTILITY COST SAVINGS" MEANS:

(a) A COST SAVINGS CAUSED BY A REDUCTION IN METERED OR MEASURED PHYSICAL QUANTITIES OF A BULK FUEL OR UTILITY RESULTING FROM THE IMPLEMENTATION OF ONE OR MORE ENERGY CONSERVATION MEASURES WHEN COMPARED WITH AN ESTABLISHED BASELINE OF USAGE; OR

(b) A DECREASE IN UTILITY COSTS AS A RESULT OF CHANGES IN APPLICABLE UTILITY RATES OR UTILITY SERVICE SUPPLIERS. THE SAVINGS SHALL BE CALCULATED IN COMPARISON WITH AN ESTABLISHED BASELINE OF UTILITY COSTS.

(6) "UTILITY COST-SAVINGS CONTRACT" MEANS AN ENERGY PERFORMANCE CONTRACT OR A SHARED-SAVINGS CONTRACT OR ANY OTHER AGREEMENT IN WHICH

UTILITY COST SAVINGS ARE USED TO PAY FOR SERVICES OR EQUIPMENT.

(7) "UTILITY COST-SAVINGS MEASURE" MEANS ANY INSTALLATION, MODIFICATION, OR SERVICE THAT IS DESIGNED TO REDUCE ENERGY CONSUMPTION AND RELATED OPERATING COSTS IN BUILDINGS AND OTHER FACILITIES AND INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING:

(a) INSULATION IN WALLS, ROOFS, FLOORS, AND FOUNDATIONS AND IN HEATING AND COOLING DISTRIBUTION SYSTEMS;

(b) HEATING, VENTILATING, OR AIR CONDITIONING AND DISTRIBUTION SYSTEM MODIFICATIONS OR REPLACEMENTS IN BUILDINGS OR CENTRAL PLANTS;

(c) AUTOMATIC ENERGY CONTROL SYSTEMS;

(d) REPLACEMENT OR MODIFICATION OF LIGHTING FIXTURES;

(e) ENERGY RECOVERY SYSTEMS;

(f) RENEWABLE ENERGY AND ALTERNATE ENERGY SYSTEMS;

(g) COGENERATION SYSTEMS THAT PRODUCE STEAM OR FORMS OF ENERGY, SUCH AS HEAT OR ELECTRICITY, FOR USE PRIMARILY WITHIN A BUILDING OR COMPLEX OF BUILDINGS;

(h) DEVICES THAT REDUCE WATER CONSUMPTION OR SEWER CHARGES;

(i) CHANGES IN OPERATION AND MAINTENANCE PRACTICES;

(j) PROCUREMENT OF LOW-COST ENERGY SUPPLIES OF ALL TYPES, INCLUDING ELECTRICITY, NATURAL GAS, AND OTHER FUEL SOURCES, AND WATER;

(k) INDOOR AIR QUALITY IMPROVEMENTS THAT CONFORM TO APPLICABLE BUILDING CODE REQUIREMENTS;

(l) DAYLIGHTING SYSTEMS;

(m) BUILDING OPERATION PROGRAMS THAT REDUCE UTILITY AND OPERATING COSTS INCLUDING, BUT NOT LIMITED TO, COMPUTERIZED ENERGY MANAGEMENT AND CONSUMPTION TRACKING PROGRAMS, STAFF AND OCCUPANT TRAINING, AND OTHER SIMILAR ACTIVITIES;

(n) SERVICES TO REDUCE UTILITY COSTS BY IDENTIFYING UTILITY ERRORS AND OPTIMIZING EXISTING RATE SCHEDULES UNDER WHICH SERVICE IS PROVIDED; AND

(o) ANY OTHER INSTALLATION, MODIFICATION OF INSTALLATION, OR REMODELING OF BUILDING INFRASTRUCTURE IMPROVEMENTS THAT PRODUCE UTILITY OR OPERATIONAL COST SAVINGS FOR THEIR APPOINTED FUNCTIONS IN COMPLIANCE WITH APPLICABLE STATE AND LOCAL BUILDING CODES.

24-30-2002. Contracts for energy analysis and recommendations.

(1) SUBJECT TO SUBSECTION (2) OF THIS SECTION, A STATE AGENCY MAY CONTRACT WITH ANY ENTITY OR PERSON EXPERIENCED IN THE DESIGN AND IMPLEMENTATION OF ENERGY CONSERVATION FOR AN ENERGY ANALYSIS AND RECOMMENDATIONS PERTAINING TO MEASURES THAT WOULD SIGNIFICANTLY INCREASE UTILITY COST SAVINGS AND OPERATION AND MAINTENANCE COST SAVINGS IN BUILDINGS OR OTHER FACILITIES OWNED OR RENTED BY THE STATE AGENCY.

(2) THE STATE PERSONNEL DIRECTOR OR THE STATE PERSONNEL DIRECTOR'S DESIGNEE MAY AUTHORIZE A STATE AGENCY TO ENTER INTO SUCH A CONTRACT. THE CONTRACT SHALL BE NEGOTIATED BY THE STATE AGENCY PURSUANT TO THE NEGOTIATION REQUIREMENTS DESCRIBED IN PART 14 OF THIS ARTICLE; EXCEPT THAT DIRECT, INDIRECT, OVERHEAD, AND OTHER COSTS AND RATES MAY BE SOLICITED AND CONSIDERED IN THE EVALUATION OF QUALIFICATIONS AND INCLUDED IN ANY RESULTING CONTRACT. THE CONTRACT MAY INCLUDE PROVISIONS THAT DEFINE THE RATE, AMOUNT, AND NATURE OF COSTS THAT MAY BE PROPOSED IN ANY SUBSEQUENT UTILITY COST-SAVINGS CONTRACT, THAT DESCRIBE THE CONTENT OF THE ANALYSIS, AND THAT RESERVE THE OPTION OF THE STATE AGENCY TO NEGOTIATE A SUITABLE UTILITY COST-SAVINGS CONTRACT.

(3) SUCH ENERGY ANALYSIS AND RECOMMENDATIONS SHALL INCLUDE ESTIMATES OF THE AMOUNTS BY WHICH UTILITY COST SAVINGS AND OPERATION AND MAINTENANCE COST SAVINGS WOULD INCREASE AND ESTIMATES OF ALL COSTS OF SUCH UTILITY COST-SAVINGS MEASURES OR ENERGY-SAVINGS MEASURES, INCLUDING, BUT NOT LIMITED TO, ITEMIZED COSTS OF DESIGN, ENGINEERING, EQUIPMENT, MATERIALS, INSTALLATION, MAINTENANCE, REPAIRS, AND DEBT SERVICE.

(4) PAYMENT BY A STATE AGENCY FOR AN ENERGY ANALYSIS AND RECOMMENDATIONS CONTRACT MAY BE MADE FROM MONEYS APPROPRIATED TO THE STATE AGENCY FOR OPERATING EXPENSES OR UTILITIES, OR PAYMENTS MAY BE DEFERRED AND INCORPORATED INTO A SUBSEQUENT UTILITY COST-SAVINGS CONTRACT.

24-30-2003. Utility cost-savings contracts. (1) A STATE AGENCY MAY ENTER INTO A UTILITY COST-SAVINGS CONTRACT WITH ANY PERSON OR ENTITY EXPERIENCED IN THE DESIGN AND IMPLEMENTATION OF UTILITY COST-SAVINGS MEASURES FOR BUILDINGS OR OTHER FACILITIES OR WITH THE ENTITY OR PERSON WHO PERFORMED THE ENERGY ANALYSIS AND RECOMMENDATIONS PURSUANT TO SECTION 24-30-2002 IF:

(a) THE ENERGY ANALYSIS AND RECOMMENDATIONS MADE PURSUANT TO SECTION 24-30-2002 INDICATE THAT THE EXPECTED ANNUAL PAYMENTS REQUIRED UNDER THE CONTRACT AND ANY ADDITIONAL MAINTENANCE COSTS FOR ONE OR MORE UTILITY COST-SAVINGS MEASURES ARE EXPECTED TO BE EQUAL TO OR LESS THAN THE SUM OF THE UTILITY COST SAVINGS AND OPERATION AND MAINTENANCE COST SAVINGS ACHIEVED BY THE IMPLEMENTATION OF SUCH MEASURES ON AN ANNUAL BASIS; AND

(b) THE STATE PERSONNEL DIRECTOR OR THE DIRECTOR'S DESIGNEE, PURSUANT TO CRITERIA CONTAINED IN PROCEDURES ESTABLISHED BY SUCH DIRECTOR, APPROVES THE ENERGY ANALYSIS AND RECOMMENDATIONS MADE PURSUANT TO SECTION 24-30-2002.

(2) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (2), A UTILITY COST-SAVINGS CONTRACT SHALL BE NEGOTIATED BY THE STATE AGENCY PURSUANT TO THE NEGOTIATION REQUIREMENTS DESCRIBED IN PART 14 OF THIS ARTICLE.

(b) THE NEGOTIATION REQUIREMENTS DESCRIBED IN PART 14 OF THIS ARTICLE AND ANY OTHER STATE COMPETITIVE BIDDING OR PROCUREMENT PROVISION SHALL NOT APPLY TO A STATE AGENCY THAT ENTERS INTO A UTILITY COST-SAVINGS CONTRACT WITH THE ENTITY OR PERSON WHO PERFORMED THE ENERGY ANALYSIS FOR AND MADE RECOMMENDATIONS TO THE STATE AGENCY PURSUANT TO SECTION 24-30-2002.

(3) A UTILITY COST-SAVINGS CONTRACT MAY INCLUDE APPROPRIATE LEASE-PURCHASE OR OTHER AUTHORIZED FINANCING AGREEMENTS.

(4) THE LEGISLATIVE AUTHORIZATION REQUIRED BY SECTION 24-82-801 (2) SHALL NOT APPLY TO A LEASE-PURCHASE AGREEMENT IN A UTILITY COST-SAVINGS CONTRACT AND NO SUBSEQUENT LEGISLATIVE AUTHORIZATION SHALL BE REQUIRED FOR ANY PAYMENT MADE PURSUANT TO SUCH AN AGREEMENT.

(5) PAYMENTS BY A STATE AGENCY REQUIRED UNDER A UTILITY COST-SAVINGS CONTRACT MAY BE MADE FROM MONEYS APPROPRIATED TO THE STATE AGENCY FOR OPERATING EXPENSES OR UTILITIES APPROPRIATIONS AVAILABLE TO THE STATE AGENCY AT THE TIME THE CONTRACT PAYMENTS ARE DUE.

(6) THE PROVISIONS OF ARTICLES 91 AND 92 OF THIS TITLE SHALL NOT APPLY TO UTILITY COST-SAVINGS CONTRACTS.

(7) UTILITY COST-SAVINGS CONTRACTS SHALL BE SUBJECT ONLY TO THE SUPERVISORY PROVISIONS OF PART 13 OF THIS ARTICLE.

(8) ALL SAVINGS REALIZED AS A RESULT OF A UTILITY COST-SAVINGS CONTRACT THAT ARE IN EXCESS OF THE ANNUAL CALCULATED SAVINGS BY SUCH CONTRACT MAY BE UTILIZED AS PROVIDED IN SECTION 24-75-108 (3).

(9) THE UTILITY COST-SAVINGS CONTRACTS AUTHORIZED BY THIS SECTION SHALL PROVIDE THAT ALL OF THE OBLIGATIONS OF THE STATE UNDER SUCH CONTRACTS SHALL BE SUBJECT TO THE ACTION OF THE GENERAL ASSEMBLY IN ANNUALLY MAKING MONEYS AVAILABLE FOR ALL PAYMENTS THEREUNDER AND THAT THE OBLIGATIONS SHALL NOT BE DEEMED OR CONSTRUED AS CREATING AN INDEBTEDNESS OF THE STATE WITHIN THE MEANING OF ANY PROVISION OF THE STATE CONSTITUTION OR THE LAWS OF THE STATE CONCERNING OR LIMITING THE CREATION OF INDEBTEDNESS BY THE STATE AND SHALL NOT CONSTITUTE A MULTIPLE FISCAL-YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION OF THE STATE WITHIN THE MEANING OF SECTION 20 (4) OF ARTICLE X OF THE CONSTITUTION.

(10) THE STATE PERSONNEL DIRECTOR MAY ESTABLISH PROCEDURES CONTAINING CRITERIA FOR AUTHORIZATION OF UTILITY COST-SAVINGS CONTRACTS.

SECTION 2. 24-75-108 (3) and (8), Colorado Revised Statutes, are amended, and the said section 24-75-108 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-75-108. Intradepartmental transfers between appropriations - repeal.

(3) (a) Transfers within a principal department from an operating expense item to a utilities item, from an operating expense item to a leased space item, or from a utilities item to a utilities item, which are made on or after May 1 and before the forty-fifth day after the close of each fiscal year, shall be deemed to be between like purposes within the meaning of subsection (1) of this section.

(b) ANY SAVINGS REALIZED IN A UTILITIES ITEM RESULTING FROM A UTILITY COST-SAVINGS CONTRACT PURSUANT TO SECTION 24-30-2003 MAY BE TRANSFERRED TO AN OPERATING EXPENSE ITEM FOR THE PURPOSE OF MAKING AN ANNUAL PAYMENT ON A LEASE-PURCHASE AGREEMENT UNDER SUCH CONTRACT.

(8) The total amount of moneys transferred between items of appropriation made to principal departments of state government and to the office of the governor pursuant to this section, other than transfers within a principal department from an operating expense item to a utilities item, FROM A UTILITIES ITEM TO AN OPERATING EXPENSE ITEM PURSUANT TO PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION, or from a utilities item to a utilities item, shall not exceed two million dollars.

(12) AS USED IN THIS SECTION, "UTILITIES" MEANS WATER, SEWER SERVICE, ELECTRICITY, OR OTHER FUEL SOURCES, EQUIPMENT PURCHASED FOR THE PURPOSE OF UTILITY COST SAVINGS, PAYMENTS MADE TO PRIVATE COMPANIES FOR SERVICES RENDERED OR EQUIPMENT INSTALLED FOR THE PURPOSE OF REDUCING UTILITY COSTS, LEASE-PURCHASE PAYMENTS TO PRIVATE COMPANIES FOR THE PURPOSE OF REDUCING UTILITY COSTS, AND ALL HEATING FUELS.

SECTION 3. 29-4-729, Colorado Revised Statutes, is amended to read:

29-4-729. Reporting. (1) The authority shall submit to the governor and the general assembly within six months after the end of the fiscal year a report which shall set forth a complete and detailed operating and financial statement of the authority during such year. Also included in the report shall be any recommendations with reference to additional legislation or other action that may be necessary to carry out the purposes of the authority.

(2) ON OR BEFORE DECEMBER 31, 2001, THE AUTHORITY, ACTING THROUGH THE PROGRAM, CREATED AND ADMINISTERED BY THE AUTHORITY, COMMONLY KNOWN AS E-STAR COLORADO, OR THE SUCCESSOR TO SUCH PROGRAM, SHALL SUBMIT TO THE GOVERNOR AND GENERAL ASSEMBLY AN ASSESSMENT OF EXISTING ENERGY CONSERVATION AND EFFICIENCY PROGRAMS AND STANDARDS ESTABLISHED BY THE STATE, LOCAL GOVERNMENTAL ENTITIES, OR PRIVATE ENTITIES. THE ASSESSMENT SHALL INCLUDE A COMPARISON OF SUCH PROGRAMS AND STANDARDS TO SIMILAR PROGRAMS AND STANDARDS ADOPTED IN OTHER STATES, AS WELL AS AN EVALUATION OF THE EFFECTIVENESS OF VOLUNTARY PERFORMANCE PROGRAMS AND OTHER FINANCIAL INCENTIVES. THE AUTHORITY, ON BEHALF OF E-STAR COLORADO, MAY ACCEPT AND EXPEND MONEYS FROM GIFTS, GRANTS, AND DONATIONS TO HELP DEFRAY THE EXPENSES OF PROVIDING THE ASSESSMENT REQUIRED UNDER THIS SUBSECTION (2).

SECTION 4. 29-12.5-101 (1), the introductory portion to 29-12.5-101 (2), 29-12.5-101 (2) (a), (2) (d), (2) (i), the introductory portion to 29-12.5-101 (3),

29-12.5-101 (3) (a), (3) (b), (3) (c), (3) (d), (3) (e), (3) (h), and (4), Colorado Revised Statutes, are amended, and the said 29-12.5-101 (2) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

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

(1) "Board" means a governing body of any municipality or home rule county, a board of county commissioners of any county, A SPECIAL DISTRICT, or a board of education of any school district.

(2) ~~"Energy conservation"~~ "UTILITY COST-SAVINGS measure" means an installation, ~~or modification, of an installation in or upon or remodeling of a building or other facility~~ OR SERVICE THAT IS DESIGNED to reduce energy consumption AND RELATED OPERATING COSTS IN BUILDINGS AND OTHER FACILITIES and includes, but is not limited to, the following:

(a) ~~Insulation of the building structure and systems within the building~~ IN WALLS, ROOFS, FLOORS, AND FOUNDATIONS AND IN HEATING AND COOLING DISTRIBUTION SYSTEMS;

(d) Heating, ventilating, or air conditioning AND DISTRIBUTION system modifications or replacements IN BUILDINGS OR CENTRAL PLANTS;

(i) ~~Any other modification, installation, or remodeling approved as an energy conservation measure by the board.~~ RENEWABLE ENERGY AND ALTERNATE ENERGY SYSTEMS;

(j) DEVICES THAT REDUCE WATER CONSUMPTION OR SEWER CHARGES;

(k) CHANGES IN OPERATION AND MAINTENANCE PRACTICES;

(l) PROCUREMENT OF LOW-COST ENERGY SUPPLIES OF ALL TYPES, INCLUDING ELECTRICITY, NATURAL GAS, AND OTHER FUEL SOURCES, AND WATER;

(m) INDOOR AIR QUALITY IMPROVEMENTS THAT CONFORM TO APPLICABLE BUILDING CODE REQUIREMENTS;

(n) DAYLIGHTING SYSTEMS;

(o) BUILDING OPERATION PROGRAMS THAT REDUCE UTILITY AND OPERATING COSTS INCLUDING, BUT NOT LIMITED TO, COMPUTERIZED ENERGY MANAGEMENT AND CONSUMPTION TRACKING PROGRAMS, STAFF AND OCCUPANT TRAINING, AND OTHER SIMILAR ACTIVITIES;

(p) SERVICES TO REDUCE UTILITY COSTS BY IDENTIFYING UTILITY ERRORS AND OPTIMIZING RATE SCHEDULES;

(q) ANY OTHER MODIFICATION, INSTALLATION, OR REMODELING APPROVED AS AN UTILITY COST-SAVINGS MEASURE BY THE BOARD.

(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 OR OPERATION AND MAINTENANCE COST SAVINGS, which contract:

(a) Sets forth ~~the calculated savings of energy costs attributable to all energy saving measures~~ THE CALCULATED UTILITY COST SAVINGS OR OPERATION AND MAINTENANCE COST SAVINGS for each year during the contract period;

(b) Provides that ~~such calculated~~ THE AMOUNT OF ACTUAL savings for each ~~such~~ year DURING THE CONTRACT PERIOD shall exceed ~~all~~ ANNUAL CONTRACT payments, ~~except payments for maintenance and repairs and obligations on the termination of the contract prior to expiration~~ INCLUDING MAINTENANCE COSTS, to be made during such year by the board contracting for ~~such~~ UTILITY COST-SAVINGS measures;

(c) Requires the party entering into such contract with the board to PROVIDE A WRITTEN guarantee that the ~~actual savings of energy costs attributable to all such energy saving measures~~ SUM OF UTILITY COST SAVINGS AND OPERATION AND MAINTENANCE COST SAVINGS for each year during the FIRST THREE YEARS OF THE contract period shall not be less than the calculated savings for that year set forth pursuant to paragraph (a) of this subsection (3);

(d) Requires such party to deposit with such board an amount of money equal to ~~all payments, except payments for maintenance and repairs and obligations on termination of the contract prior to expiration, to be made by such board during the first year of the contract or a contract of insurance guaranteeing payment to such board of the amount, if any, by which such payments exceed such actual savings of energy costs for the first year; except that such party may guarantee payment to a board of education of any school district by a surety bond in such amount executed by a surety company authorized to do business in the state;~~

(e) Provides that, ~~if such party deposits moneys with such board pursuant to paragraph (d) of this subsection (3) and~~ if all payments, except payments for maintenance and repairs and obligations on the termination of the contract prior to expiration, made by such board during any year SUBJECT TO THE GUARANTEE IN PARAGRAPH (c) OF THIS SUBSECTION (3) exceed the ~~actual savings of energy costs attributable to all energy saving measures~~ SUM OF UTILITY COST SAVINGS AND OPERATION AND MAINTENANCE SAVINGS for that year, such party shall forfeit to such board that portion of such moneys equal to the amount by which such payments exceeded such ~~actual~~ savings;

(h) Requires that the remaining such payments to be made by such board shall be made within ~~ten~~ 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 UTILITY COST-SAVINGS EQUIPMENT FOR WHICH THE CONTRACT IS MADE, NOT TO EXCEED TWENTY-FIVE YEARS.

(4) "Energy saving measure" means:

(a) The acquisition and installation, by purchase, lease, lease-purchase, lease with an option to buy, or installment purchase, of ~~an energy conservation~~ A UTILITY COST-SAVINGS measure and any attendant architectural and engineering consulting

services; or

(b) Architectural and engineering consulting services related to ~~energy conservation~~ UTILITY COST SAVINGS.

SECTION 5. 29-12.5-101, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

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

(4.5) "OPERATION AND MAINTENANCE COST SAVINGS" MEANS A MEASURABLE DECREASE IN OPERATION AND MAINTENANCE COSTS THAT IS A DIRECT RESULT OF THE IMPLEMENTATION OF ONE OR MORE UTILITY COST SAVINGS MEASURES. THE SAVINGS SHALL BE CALCULATED IN COMPARISON WITH AN ESTABLISHED BASELINE OF OPERATION AND MAINTENANCE COSTS.

(7) "UTILITY COST SAVINGS" MEANS:

(a) A COST SAVINGS CAUSED BY A REDUCTION IN METERED OR MEASURED PHYSICAL QUANTITIES OF A BULK FUEL OR UTILITY RESULTING FROM THE IMPLEMENTATION OF ONE OR MORE UTILITY COST SAVINGS MEASURES WHEN COMPARED WITH AN ESTABLISHED BASELINE OF USAGE; OR

(b) A DECREASE IN UTILITY COSTS AS A RESULT OF CHANGES IN APPLICABLE UTILITY RATES OR UTILITY SERVICE SUPPLIERS. THE SAVINGS SHALL BE CALCULATED IN COMPARISON WITH AN ESTABLISHED BASELINE OF UTILITY COSTS, EXCEPTING OTHER AVAILABLE CAPITAL CONTRIBUTIONS PROVIDED BY THE POLITICAL SUBDIVISION.

(8) "UTILITY COST-SAVINGS CONTRACT" MEANS AN ENERGY PERFORMANCE CONTRACT OR A SHARED-~~SAVINGS~~ CONTRACT OR ANY OTHER AGREEMENT IN WHICH UTILITY COST SAVINGS ARE USED TO PAY FOR SERVICES OR EQUIPMENT.

SECTION 6. 29-12.5-102, Colorado Revised Statutes, is amended to read:

29-12.5-102. Contract for analysis and recommendations. (1) The board of any political subdivision may contract with an architect, professional engineer, or other person experienced in the design and implementation of ~~energy conservation~~ UTILITY COST-~~SAVINGS~~ MEASURES or energy saving measures for an analysis and recommendations pertaining to such measures that would significantly ~~reduce energy consumption~~ INCREASE UTILITY COST SAVINGS AND OPERATION AND MAINTENANCE COST SAVINGS in buildings or other facilities owned or rented by the political subdivision.

(2) Such analysis and recommendations shall include estimates of the amounts by which ~~energy consumption would be reduced~~ UTILITY COST SAVINGS AND OPERATION AND MAINTENANCE COST SAVINGS WOULD INCREASE and estimates of all costs of such ~~energy conservation~~ UTILITY COST-~~SAVINGS~~ MEASURES or energy saving measures including, but not limited to, ITEMIZED costs of design, engineering, EQUIPMENT, MATERIALS, installation, maintenance, repairs, and debt service.

SECTION 7. 29-12.5-103 (1) and (3), Colorado Revised Statutes, are amended

to read:

29-12.5-103. Financing utility cost savings measures - exception to debt limitations. (1) If the board, after receiving the analysis and recommendations pursuant to section 29-12.5-102, finds that the amount of money the political subdivision would spend on such ~~energy conservation~~ UTILITY COST-SAVINGS MEASURES or energy saving measures is not likely to exceed the amount of money it would save in energy costs over the ~~ensuing ten years~~ TERM OF THE CONTRACT, the board may:

(a) Enter into an ~~energy performance contract or a shared-savings~~ UTILITY COST-SAVINGS contract with any architect, professional engineer, or other person experienced in the design and implementation of energy saving measures for buildings or other facilities owned or rented by the political subdivision OR WITH THE ENTITY OR PERSON WHO PERFORMED THE ENERGY ANALYSIS AND PROVIDED RECOMMENDATIONS PURSUANT TO SECTION 29-12.5-102; or

(b) Otherwise incur indebtedness to finance ~~energy conservation~~ UTILITY COST-SAVINGS MEASURES or energy saving measures.

(3) When an ~~energy conservation~~ A UTILITY COST-SAVINGS measure involves a cogeneration system, the sale of excess cogenerated energy shall be subject to the same state and federal regulatory requirements as the sale of all other cogenerated energy.

SECTION 8. 29-12.5-104, Colorado Revised Statutes, is amended to read:

29-12.5-104. Monitoring and reporting of energy and cost savings. ~~So long as any indebtedness incurred by a board under section 29-12.5-103 remains unpaid,~~ The board shall monitor the reductions in energy consumption and cost savings attributable to the ~~energy conservation~~ UTILITY COST-SAVINGS MEASURES and energy saving measures financed pursuant to section 29-12.5-103 and shall annually prepare a report documenting such reductions and savings FOR THE FIRST TWO YEARS OF THE CONTRACT. The report shall be certified by an architect or engineer independent of any person, firm, or corporation that provided goods or services to the board in connection with the ~~energy conservation~~ UTILITY COST-SAVINGS MEASURES or energy saving measures that are the subject of the report.

SECTION 9. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: June 5, 2001