

## CHAPTER 394

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**GOVERNMENT - STATE**

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## SENATE BILL 14-186

BY SENATOR(S) Schwartz and Kerr, Aguilar, Heath, Jones, Nicholson, Todd;  
also REPRESENTATIVE(S) Tyler and Hamner, Exum, Lee, McLachlan, Melton, Mitsch Bush, Rosenthal, Schafer.

**AN ACT**

**CONCERNING THE AGGREGATION OF EFFICIENCY PROJECTS IN SMALL COMMUNITIES IN ORDER TO  
ATTRACT PRIVATE SECTOR INVESTMENT THROUGH PERFORMANCE CONTRACTING.**

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

**SECTION 1.** In Colorado Revised Statutes, **add** 24-38.5-109 as follows:

**24-38.5-109. Aggregation of efficiency or renewable energy projects in small or rural schools and small or rural communities in order to attract private sector investment through performance contracting - legislative declaration - definitions.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) PERFORMANCE CONTRACTING IS AN IMPORTANT TOOL THAT HAS BEEN UTILIZED BY THE STATE FOR OVER FIFTEEN YEARS. THE STATE HAS ESTABLISHED POWERFUL WORKING RELATIONSHIPS WITH PRIVATE SECTOR ENERGY PERFORMANCE CONTRACTING PROFESSIONALS, KNOWN AS ENERGY SERVICE COMPANIES, TO FINANCE ENERGY SAVINGS UPGRADES FOR STATE AGENCIES, SCHOOL DISTRICTS, SPECIAL DISTRICTS, COUNTIES AND MUNICIPALITIES, AND EVEN AT THE STATE CAPITOL BUILDING.

(b) SOME SMALL OR RURAL COMMUNITIES LACK THE OPPORTUNITY FOR THE BENEFITS OF PERFORMANCE CONTRACTING, SO ENGAGING SUCH COMMUNITIES THROUGH EDUCATION AND EXISTING RESOURCES IS SOUND POLICY;

(c) SUCH SMALL OR RURAL COMMUNITIES OFTEN LACK ASSETS OR BUILDING INVENTORY TO ATTRACT PERFORMANCE CONTRACTING CAPITAL;

(d) SINCE MUCH OF THE INFRASTRUCTURE IN SMALL OR RURAL COMMUNITIES IS OUTDATED, COSTLY TO MAINTAIN, AND ENERGY INTENSIVE, EFFICIENCY UPGRADES

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

ARE NEEDED FOR BUILDINGS, MECHANICAL EQUIPMENT, ELECTRICAL SYSTEMS, LIGHTING, WATER, MOTOR VEHICLE FLEETS, AND COMMUNITY ENTITY-OWNED FUELING STATIONS FOR SUCH MOTOR VEHICLE FLEETS;

(e) REGIONAL IDENTIFICATION OF EFFICIENCY PROJECTS AND RENEWABLE ENERGY PROJECTS IN SMALL OR RURAL COMMUNITIES IS IMPORTANT;

(f) AGGREGATING EFFICIENCY PROJECTS OR RENEWABLE ENERGY PROJECTS IN SMALL OR RURAL COMMUNITIES INTO A DYNAMIC MULTIDIMENSIONAL PORTFOLIO OF AN ACCEPTABLE SIZE TO ATTRACT PRIVATE SECTOR FINANCING TO SUCH COMMUNITIES WITHOUT CREATING AN OBLIGATION OF THE STATE WILL OPEN UP THE FINANCIAL MARKET FOR PERFORMANCE CONTRACTING IN SUCH COMMUNITIES, WILL ENGAGE THE USE OF LOCAL CONTRACTORS, AND WILL CREATE LOCAL JOBS; AND

(g) AS A RESULT OF SUCH AGGREGATION, SMALL OR RURAL COMMUNITY LEADERS WILL BE SUPPORTED IN THEIR PURSUIT TO MAKE COLORADO MORE ENERGY EFFICIENT, EQUIP SUCH COMMUNITIES WITH MUCH NEEDED MODERNIZED INFRASTRUCTURE, AND REDUCE LIFE-CYCLE COSTS FOR TAXPAYER-SUPPORTED ENTITIES.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COMMUNITY ENTITY" MEANS A SCHOOL DISTRICT, SPECIAL DISTRICT, OR COUNTY OR MUNICIPALITY IN A SMALL OR RURAL COMMUNITY IN THE STATE.

(b) "DIVERSE" MEANS A RANGE OF EFFICIENCY PROJECTS AND RENEWABLE ENERGY PROJECTS BASED ON GEOGRAPHY, SIZE, LONG-TERM AND SHORT-TERM PAYBACK PERIODS, OVERALL COST, AND TYPES OF EFFICIENCY PROJECTS AND RENEWABLE ENERGY PROJECTS.

(c) "EFFICIENCY PROJECTS" MEANS ONE OR MORE PROJECTS OF A COMMUNITY ENTITY THAT RESULTS IN THE MORE EFFICIENT USE OF ENERGY OR RESOURCES, SUCH AS:

(I) INSTALLING EQUIPMENT AND RELATED INFRASTRUCTURE THAT WILL HELP DEFRAID ENERGY COSTS;

(II) IMPROVING THE ENERGY EFFICIENCY OF A BUILDING INCLUDING BUT NOT LIMITED TO ADDRESSING LIGHTING ISSUES, IMPROVING MECHANICAL SYSTEMS AND EQUIPMENT, IMPROVING THE BUILDING ENVELOPE, OR IMPROVING OPERATIONS MANAGEMENT;

(III) REDUCING WATER USAGE OR CONSUMPTION;

(IV) RE-ENGINEERING OR IMPROVING WATER OR WASTEWATER TREATMENT FACILITIES; OR

(V) IMPROVING THE ENERGY USAGE OF MOTOR VEHICLE FLEETS OR COMMUNITY ENTITY-OWNED FUELING STATIONS FOR SUCH MOTOR VEHICLE FLEETS, INCLUDING BUT NOT LIMITED TO INCREASING THE USE OF ALTERNATIVE FUEL VEHICLES IN SUCH MOTOR VEHICLE FLEETS.

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

(e) "PERFORMANCE CONTRACT" MEANS A CONTRACT SIMILAR TO THE CONTRACTS DESCRIBED IN SECTION 24-30-2001 OR 24-38.5-106, EXCEPT THAT A PERFORMANCE CONTRACT ALLOWED PURSUANT TO THIS SECTION MAY NOT CREATE A FINANCIAL OBLIGATION TO THE STATE.

(f) "RENEWABLE ENERGY PROJECTS" MEANS ONE OR MORE PROJECTS OF A COMMUNITY ENTITY TO INSTALL EQUIPMENT AND RELATED INFRASTRUCTURE FOR RENEWABLE ENERGY GENERATION, INCLUDING, BUT NOT LIMITED TO GEOTHERMAL, HYDROELECTRIC, WIND, SOLAR, OR BIOMASS ENERGY.

(3) IN AN EFFORT TO SIMPLIFY THE PROCESS FOR SMALL AND RURAL COMMUNITIES, THE OFFICE SHALL CONSULT WITH THE ENERGY SERVICE COMPANIES ON ITS LIST OF PREQUALIFIED ENERGY SERVICE COMPANIES AND HAVE A LIST AVAILABLE OF THOSE PREQUALIFIED ENERGY SERVICE COMPANIES THAT ARE INTERESTED AND PREPARED TO WORK IN EACH REGION WHERE THE DEPARTMENT OF LOCAL AFFAIRS MAINTAINS A REGIONAL OFFICE AND FIELD STAFF.

(4)(a) WITHOUT CREATING A FINANCIAL OBLIGATION TO THE STATE, THE OFFICE MAY, WITHIN EXISTING RESOURCES, WORK TOGETHER WITH ITS PREQUALIFIED ENERGY SERVICE COMPANIES TO ASCERTAIN EFFICIENCY PROJECTS OR RENEWABLE ENERGY PROJECTS THAT CAN BE AGGREGATED TO CREATE A LARGER PORTFOLIO OF DIVERSE EFFICIENCY PROJECTS OR RENEWABLE ENERGY PROJECTS WITH COSTS TOTALING AN AMOUNT THAT IN A FAVORABLE FINANCIAL MARKET WILL ATTRACT THE INVESTMENT OF PRIVATE SECTOR BANKS OR INVESTORS THROUGH PERFORMANCE CONTRACTS. IN THE EVENT SUCH A LARGER PORTFOLIO OF DIVERSE EFFICIENCY PROJECTS OR RENEWABLE ENERGY PROJECTS IS ESTABLISHED PURSUANT TO THIS SUBSECTION (4) AND FINANCED, THE FINANCING DOCUMENTS MUST INCLUDE A COST OF ISSUANCE FEE PAYABLE TO THE DEPARTMENT OF LOCAL AFFAIRS OF A PERCENTAGE OF THE ISSUANCE, NOT TO EXCEED ONE PERCENT, THAT MUST BE CREDITED TO THE EFFICIENT SCHOOLS AND COMMUNITIES PERFORMANCE CONTRACTING FUND.

(b) ONCE THERE IS SUFFICIENT MONEY IN THE EFFICIENT SCHOOLS AND COMMUNITIES PERFORMANCE CONTRACTING FUND FROM THE COST OF ISSUANCE FEE DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (4), IN THE EVENT A COMMUNITY ENTITY'S EFFICIENCY PROJECT OR RENEWABLE ENERGY PROJECT IS NOT FINANCED, THE DEPARTMENT OF LOCAL AFFAIRS SHALL CONSULT WITH THE OFFICE IN COOPERATION WITH THE PREQUALIFIED ENERGY SERVICE COMPANIES DETERMINED TO WORK WITHIN THAT COMMUNITY ENTITY'S REGION AS DESCRIBED IN SUBSECTION (3) OF THIS SECTION TO REVIEW THE COMMUNITY ENTITY'S NEED AND, IF APPROVED, AWARD A GRANT TO SUCH COMMUNITY ENTITY FOR A REIMBURSEMENT OF A PORTION OF THE TECHNICAL ENERGY AUDIT COMPLETED BY THE COMMUNITY ENTITY FROM THE COST OF ISSUANCE FEES CREDITED TO THE FUND PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4). A PREQUALIFIED ENERGY SERVICE COMPANY MAY ALSO SEEK AND THE DEPARTMENT OF LOCAL AFFAIRS, IN CONSULTATION WITH THE OFFICE, MAY AWARD A GRANT FROM THE COST OF ISSUANCE FEES CREDITED TO THE FUND FOR A PORTION OF THE ENERGY SERVICE COMPANY'S COSTS IF AN EFFICIENCY PROJECT OR RENEWABLE ENERGY PROJECT IS

NOT FINANCED. ALL GRANTS AWARDED BY THE DEPARTMENT OF LOCAL AFFAIRS PURSUANT TO THIS PARAGRAPH (b) MUST BE PRIORITIZED BY NEED AND MAY NOT EXCEED THE AVAILABLE COST OF ISSUANCE FEES.

(5) THE OFFICE SHALL PROVIDE FACILITATION AND TECHNICAL SUPPORT FOR COMMUNITY ENTITIES THAT HAVE BEEN AGGREGATED AS DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION, AND SHALL CREATE AND PROVIDE STANDARDIZED DOCUMENTS TO SUPPORT LOCAL PERFORMANCE CONTRACTS.

(6) THE OFFICE MAY CONSULT WITH NONPROFIT ORGANIZATIONS AND THE DEPARTMENT OF LOCAL AFFAIRS TO PROVIDE EDUCATION AND OUTREACH TO COMMUNITY ENTITIES REGARDING THE ADVANTAGES OF PERFORMANCE CONTRACTING FOR PURPOSES OF COMPLETING EFFICIENCY PROJECTS OR RENEWABLE ENERGY PROJECTS IN SUCH COMMUNITY ENTITIES.

(7) NOTWITHSTANDING THE REQUIREMENTS OF SECTION 24-75-402, THERE IS HEREBY CREATED IN THE STATE TREASURY THE EFFICIENT SCHOOLS AND COMMUNITIES PERFORMANCE CONTRACTING FUND, REFERRED TO IN THIS SECTION AS THE "FUND", CONSISTING OF THE COST OF ISSUANCE FEES CREDITED TO THE DEPARTMENT OF LOCAL AFFAIRS PURSUANT TO PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION. THE MONEYS IN THE FUND ARE CONTINUOUSLY APPROPRIATED BY THE GENERAL ASSEMBLY TO THE DEPARTMENT OF LOCAL AFFAIRS FOR AWARDED GRANTS AS SPECIFIED IN PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION. IN THE EVENT THE DEPARTMENT OF LOCAL AFFAIRS CANNOT IMPLEMENT THE GRANT PROGRAM WITHIN EXISTING RESOURCES, THEN THE DEPARTMENT OF LOCAL AFFAIRS MAY EXPEND UP TO FIVE PERCENT ANNUALLY OF THE MONEYS IN THE FUND TO OFFSET THE COSTS INCURRED IN IMPLEMENTING THE GRANT PROGRAM. THE STATE TREASURER MAY INVEST ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSE OF THIS SECTION AS PROVIDED BY LAW. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

**SECTION 2.** In Colorado Revised Statutes, 24-75-402, **add** (5) (cc) as follows:

**24-75-402. Cash funds - limit on uncommitted reserves - reduction in amount of fees - exclusions - repeal.** (5) Notwithstanding any provision of this section to the contrary, the following cash funds are excluded from the limitations specified in this section:

(cc) THE EFFICIENT SCHOOLS AND COMMUNITIES PERFORMANCE CONTRACTING FUND CREATED IN SECTION 24-38.5-109 (7).

**SECTION 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 6, 2014