

CHAPTER 326

HEALTH AND ENVIRONMENT

HOUSE BILL 21-1286

BY REPRESENTATIVE(S) Kipp and Valdez A., Bernett, Amabile, Benavidez, Bird, Boesenecker, Cutter, Duran, Froelich, Gonzales-Gutierrez, Gray, Hooton, Jackson, Jodeh, Lontine, McCormick, Michaelson Jenet, Mullica, Ricks, Sirota, Woodrow, Exum, Kennedy, Titone;
also SENATOR(S) Priola and Pettersen, Buckner, Danielson, Fenberg, Jaquez Lewis, Lee, Story, Winter.

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 RULES REGARDING PERFORMANCE STANDARDS RELATED TO ENERGY AND GREENHOUSE GAS EMISSIONS AND MODIFYING STATUTORY REQUIREMENTS REGARDING ENERGY PERFORMANCE CONTRACTS.

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 - task force - rules - reports - definitions - legislative declaration - repeal. (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) MANY BUILDING OWNERS HAVE MADE PROACTIVE EFFORTS TO REDUCE THE

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ENERGY USE AND GREENHOUSE GAS EMISSIONS OF THEIR BUILDINGS, YET MORE REMAINS TO BE DONE TO HELP THE STATE MEET ITS GREENHOUSE GAS REDUCTION GOALS;

(d) BUILDING TENANTS THAT PAY ENERGY BILLS OFTEN LACK THE ABILITY TO IMPLEMENT BUILDING UPGRADES THAT COULD IMPROVE PERFORMANCE, REDUCE EMISSIONS, AND REDUCE THOSE COSTS;

(e) 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;

(f) (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.

(g) 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;

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

(i) 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) DEVELOP 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) "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.

(d) 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.

(e) 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.

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

(g) (I) "CAMPUS" MEANS A COLLECTION OF TWO OR MORE BUILDINGS THAT ARE OWNED AND OPERATED BY THE SAME PERSON AND THAT HAVE A SHARED PURPOSE AND FUNCTION AS A SINGLE PROPERTY.

(II) "CAMPUS" INCLUDES TWO OR MORE OF THE BUILDINGS THAT COMPRISE THE CAPITOL COMPLEX.

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

(i) "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.

(j) (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, STAND-ALONE PARKING GARAGE, OR AIRPLANE HANGAR 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.

(k) "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.

(l) "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.

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

(n) "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.

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

(p) "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.

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

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

(s) "PERFORMANCE STANDARDS" MEANS STANDARDS THAT THE COMMISSION ESTABLISHES BY RULE PURSUANT TO SUBSECTION (8)(c) OF THIS SECTION WITH WHICH OWNERS OF COVERED BUILDINGS ARE REQUIRED TO COMPLY.

(t) "PUBLIC BUILDING" MEANS A COVERED BUILDING OWNED BY:

(I) THE STATE;

(II) A LOCAL GOVERNMENT;

(III) A DISTRICT OR SPECIAL DISTRICT REGULATED UNDER TITLE 32;

(IV) A STATE INSTITUTION OF HIGHER EDUCATION;

(V) A PRIVATE INSTITUTION OF HIGHER EDUCATION AS DEFINED IN SECTION 23-18-102 (9);

(VI) A SCHOOL DISTRICT CREATED PURSUANT TO ARTICLE 30 OF TITLE 22; AND

(VII) A CHARTER SCHOOL AUTHORIZED PURSUANT TO PART 1 OF ARTICLE 30.5 OF TITLE 22.

(u) "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.

(v) "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.

(w) "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.

(x) "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.

(y) "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 PUBLIC BUILDING THAT IS A COVERED BUILDING.

(4) Utility data requirements. (a) ON OR BEFORE JUNE 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:

(A) NINETY DAYS AFTER RECEIVING THE OWNER'S VALID WRITTEN OR ELECTRONIC REQUEST IF THE REQUEST IS RECEIVED IN 2022;

(B) THIRTY DAYS AFTER RECEIVING THE OWNER'S VALID WRITTEN OR ELECTRONIC REQUEST IF THE REQUEST IS RECEIVED IN 2023 OR LATER;

(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;

(V) PROVIDED IN ACCORDANCE WITH THIS SUBSECTION (4), REGARDLESS OF WHETHER THE OWNER IS NAMED ON THE UTILITY ACCOUNT FOR THE COVERED BUILDING; AND

(VI) IF THE QUALIFYING UTILITY IS AN INVESTOR-OWNED UTILITY, PROVIDED IN ACCORDANCE WITH THE PUBLIC UTILITIES COMMISSION'S RULES CONCERNING CUSTOMER DATA AND PERSONALLY IDENTIFYING INFORMATION.

(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.

(d) TO MEET THE REQUIREMENTS OF THIS SUBSECTION (4), A QUALIFYING UTILITY THAT IS NOT AN INVESTOR-OWNED UTILITY MAY SEEK AND USE GRANT FUNDING FROM THE COLORADO CLEAN ENERGY FUND, A NONPROFIT CORPORATION, OR THE ENERGY FUND CREATED IN SECTION 24-38.5-102.4 (1)(a)(I).

(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;

(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; OR

(V) THE COVERED BUILDING HAS FOUR OR MORE UTILITY CUSTOMERS, IS NOT LOCATED WITHIN A QUALIFYING UTILITY'S SERVICE TERRITORY, AND IS UNABLE TO GET AGGREGATED DATA FROM THE UTILITY THAT SERVES THE COVERED BUILDING.

(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 GREENHOUSE GAS EMISSIONS, 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) **Task force recommendations for implementation - rules - repeal.**

(a) (I) NO LATER THAN OCTOBER 1, 2021, THE DIRECTOR OF THE OFFICE SHALL APPOINT AND CONVENE A TASK FORCE TO DEVELOP AND PROVIDE RECOMMENDATIONS TO THE COMMISSION, THE GENERAL ASSEMBLY, AND THE GOVERNOR ON PERFORMANCE STANDARDS FOR COVERED BUILDINGS. ANY RECOMMENDATIONS MUST BE APPROVED BY AT LEAST TWO-THIRDS OF THE MEMBERS APPOINTED TO THE TASK FORCE.

(II) THE TASK FORCE SHALL DEVELOP RECOMMENDATIONS REGARDING THE RULES THAT THE COMMISSION SHALL PROMULGATE PURSUANT TO SUBSECTION (8)(c) OF THIS SECTION, FOR:

(A) INTERIM PERFORMANCE STANDARDS THAT WOULD ACHIEVE A REDUCTION IN GREENHOUSE GAS EMISSIONS OF SEVEN PERCENT BY 2026 AS COMPARED TO 2021 LEVELS AS REPORTED IN 2022 FOR 2021 BENCHMARKING DATA;

(B) PERFORMANCE STANDARDS THAT WOULD ACHIEVE A REDUCTION IN GREENHOUSE GAS EMISSIONS OF TWENTY PERCENT BY 2030 AS COMPARED TO 2021 LEVELS; AND

(C) THE PROCESS FOR ADVISING, SOLICITING PUBLIC INPUT ON, AND MAKING RECOMMENDATIONS TO THE COMMISSION ON PERFORMANCE STANDARDS FOR 2030 TO 2050.

(III) IN DEVELOPING RECOMMENDATIONS, THE TASK FORCE SHALL:

(A) SOLICIT FEEDBACK FROM A BROAD RANGE OF INDUSTRIES AND BUILDING OWNERS; AND

(B) EXAMINE BUILDING TYPES WITH UNIQUE ENERGY NEEDS INCLUDING AVIATION FACILITIES, NURSING HOMES, AND HOSPITALS.

(IV) IN CALCULATING GREENHOUSE GAS REDUCTIONS PURSUANT TO THIS SUBSECTION (8), THE CALCULATION MUST NOT INCLUDE SAVINGS FROM STATEWIDE DECARBONIZATION OF ELECTRICITY OR NATURAL GAS UTILITY GRIDS, BUT MAY INCLUDE SAVINGS FROM UTILITIES' OR LOCAL GOVERNMENTS' ENERGY EFFICIENCY PROGRAMS.

(V) ADDITIONALLY, THE TASK FORCE MAY CONSIDER MAKING 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) HOW REGULATIONS AND AGENCY SUPPORT COULD HELP ENSURE BUILDING OWNERS AVOID FINES THROUGH COMPLIANCE WITH PERFORMANCE STANDARDS.

(VI) IN DEVELOPING ITS RECOMMENDATIONS, THE TASK FORCE MAY CONSIDER:

(A) BENCHMARKING DATA REPORTED PURSUANT TO SUBSECTION (3) OF THIS SECTION;

(B) BENCHMARKING DATA FROM COMMUNITIES THAT ARE CURRENTLY CONDUCTING COMMERCIAL BUILDING BENCHMARKING;

(C) ANY OTHER PUBLICLY AVAILABLE BUILDING BENCHMARKING DATA THROUGH WHICH BENCHMARKING IS REPORTED TO A BUILDING BENCHMARKING PROGRAM IN COLORADO; AND

(D) ANY OTHER INFORMATION THAT THE OFFICE DETERMINES IS AVAILABLE REGARDING ENERGY USE IN COMMERCIAL BUILDINGS IN COLORADO.

(b) ON OR BEFORE OCTOBER 1, 2022, THE TASK FORCE SHALL DELIVER TO THE DIRECTOR OF THE OFFICE ANY FINAL RECOMMENDATIONS DEVELOPED. THE DIRECTOR OF THE OFFICE SHALL SEND COPIES OF THE TASK FORCE'S FINAL RECOMMENDATIONS TO THE COMMISSION, THE GENERAL ASSEMBLY, AND THE

GOVERNOR.

(c) (I) IF AT LEAST TWO-THIRDS OF THE MEMBERS APPOINTED TO THE TASK FORCE AGREE ON RECOMMENDATIONS PURSUANT TO SUBSECTION (8)(a)(I) OF THIS SECTION, AND THE DIRECTOR OF THE OFFICE IN CONSULTATION WITH THE DIVISION DETERMINES THAT THE RECOMMENDATIONS MEET THE GREENHOUSE GAS EMISSION REDUCTION REQUIREMENTS SET FORTH IN SUBSECTION (8)(a)(II) OF THIS SECTION, THE DIVISION SHALL, ON OR BEFORE JANUARY 31, 2023, REQUEST THAT THE COMMISSION PUBLISH A NOTICE OF PROPOSED RULE-MAKING TO ADOPT RULES TO IMPLEMENT PERFORMANCE STANDARDS. ON OR BEFORE JUNE 1, 2023, THE COMMISSION, UPON CAREFUL CONSIDERATION OF THE RECOMMENDATIONS OF THE TASK FORCE AS PRESENTED BY THE DIVISION, SHALL PROMULGATE RULES TO ESTABLISH PERFORMANCE STANDARDS. THE COMMISSION SHALL ALSO ADOPT RULES REGARDING WAIVERS AND EXTENSIONS OF TIME REGARDING THE PERFORMANCE STANDARD REQUIREMENTS. THE COMMISSION'S RULES MUST INCLUDE A PROVISION THAT AN OWNER OF A PUBLIC BUILDING NEED ONLY COMPLY WITH PERFORMANCE STANDARDS WITH REGARD TO WORK ON A CONSTRUCTION OR RENOVATION PROJECT THAT:

(A) HAS AN ESTIMATED COST OF AT LEAST FIVE HUNDRED THOUSAND DOLLARS;

(B) IMPACTS AT LEAST TWENTY-FIVE PERCENT OF THE COVERED BUILDING'S SQUARE FOOTAGE; AND

(C) EXCLUDES UPGRADES SUCH AS PAINTING, FLOORING, OR TENANT FINISHES THAT DO NOT IMPACT ENERGY USE.

(II) IF TWO-THIRDS OF THE MEMBERS OF THE TASK FORCE CANNOT AGREE ON RECOMMENDATIONS OR IF THE DIRECTOR OF THE OFFICE IN CONSULTATION WITH THE COMMISSION DETERMINES THAT THE TASK FORCE'S RECOMMENDATIONS DO NOT MEET THE GREENHOUSE GAS EMISSION REDUCTION REQUIREMENTS SET FORTH IN SUBSECTION (8)(a)(II) OF THIS SECTION, THE COMMISSION, ON OR BEFORE JUNE 1, 2023, SHALL, BY RULE, ADOPT PERFORMANCE STANDARDS THAT MEET THE GREENHOUSE GAS EMISSION REDUCTION REQUIREMENTS SET FORTH IN SUBSECTION (8)(a)(II) OF THIS SECTION. THE COMMISSION SHALL ALSO ADOPT RULES REGARDING WAIVERS AND EXTENSIONS OF TIME REGARDING THE PERFORMANCE STANDARD REQUIREMENTS. THE COMMISSION'S RULES MUST INCLUDE A PROVISION THAT AN OWNER OF A PUBLIC BUILDING NEED ONLY COMPLY WITH PERFORMANCE STANDARDS WITH REGARD TO WORK ON A CONSTRUCTION OR RENOVATION PROJECT THAT:

(A) HAS AN ESTIMATED COST OF AT LEAST FIVE HUNDRED THOUSAND DOLLARS;

(B) IMPACTS AT LEAST TWENTY-FIVE PERCENT OF THE COVERED BUILDING'S SQUARE FOOTAGE; AND

(C) EXCLUDES UPGRADES SUCH AS PAINTING, FLOORING, OR TENANT FINISHES THAT DO NOT IMPACT ENERGY USE.

(III) THE COMMISSION SHALL NOT ADOPT RULES TO RESCIND OR MODIFY THE EXEMPTIONS FOR OWNERS OF PUBLIC BUILDINGS FROM PAYMENT OF THE ANNUAL FEE, AS SET FORTH IN SECTION 24-38.5-112 (1)(e)(II), OR FROM PAYMENT OF CIVIL

PENALTIES, AS SET FORTH IN SECTION 25-7-122 (1)(i).

(IV) THE COMMISSION SHALL, AS NECESSARY, ADOPT RULES TO MODIFY OR CONTINUE THE PERFORMANCE STANDARDS UNTIL 2050 IN ORDER TO ACHIEVE OR EXCEED GREENHOUSE GAS EMISSION REDUCTION TARGETS SET FORTH IN SECTION 25-7-102 (2)(g).

(d) THE TASK FORCE CONSISTS OF THE FOLLOWING MEMBERS, ALL OF WHOM, EXCEPT THE REPRESENTATIVES OF THE OFFICE AND THE DIVISION, ARE VOTING MEMBERS:

(I) THE DIRECTOR OF THE OFFICE OR THE DIRECTOR'S DESIGNEE;

(II) THE DIRECTOR OF THE DIVISION OR THE DIRECTOR'S DESIGNEE;

(III) TWO MEMBERS WHO ARE OWNERS OF COMMERCIAL COVERED BUILDINGS OR WHO REPRESENT OWNERS OF COMMERCIAL COVERED BUILDINGS;

(IV) ONE MEMBER WHO IS A BUILDING OPERATING ENGINEER;

(V) ONE MEMBER WHO IS AN OWNER OF A MULTIFAMILY RESIDENTIAL COVERED BUILDING OR WHO REPRESENTS OWNERS OF MULTIFAMILY RESIDENTIAL COVERED BUILDINGS;

(VI) ONE MEMBER WHO REPRESENTS AN AFFORDABLE HOUSING ORGANIZATION;

(VII) TWO MEMBERS WHO HAVE DIRECT EXPERIENCE IN, OR ARE MEMBERS OF ORGANIZATIONS REPRESENTING WORKERS IN, MECHANICAL, PLUMBING, OR ELECTRICAL WORK;

(VIII) ONE MEMBER REPRESENTING ARCHITECTS;

(IX) ONE MEMBER REPRESENTING PROFESSIONAL ENGINEERS WITH EXPERIENCE WORKING ON SYSTEMS FOR BUILDINGS;

(X) ONE MEMBER REPRESENTING DEVELOPERS, CONSTRUCTION ORGANIZATIONS, OR BUILDING CONTRACTORS;

(XI) ONE MEMBER REPRESENTING AN ELECTRIC UTILITY, A GAS UTILITY, OR A COMBINED ELECTRIC AND GAS UTILITY;

(XII) TWO MEMBERS OF ENVIRONMENTAL CONSERVATION OR ENVIRONMENTAL JUSTICE GROUPS WITH EXPERIENCE IN ENERGY EFFICIENCY OR THE BUILT ENVIRONMENT;

(XIII) ONE MEMBER FROM A LOCAL GOVERNMENT THAT HAS ENACTED OR ADOPTED A BENCHMARKING OR BUILDING ENERGY PERFORMANCE ORDINANCE OR RESOLUTION;

(XIV) ONE MEMBER FROM A LOCAL GOVERNMENT THAT HAS NOT ENACTED OR ADOPTED A BENCHMARKING OR BUILDING ENERGY PERFORMANCE ORDINANCE OR

RESOLUTION; AND

(XV) THREE MEMBERS WITH RELEVANT BUILDING PERFORMANCE EXPERTISE, AS DETERMINED BY THE DIRECTOR OF THE OFFICE.

(e) AN APPLICANT FOR THE TASK FORCE MUST SUBMIT WITH THE APPLICATION A RECOMMENDATION FROM A RELEVANT MEMBER OR TRADE ORGANIZATION, IF SUCH MEMBER OR TRADE ORGANIZATION EXISTS. IN MAKING APPOINTMENTS TO THE TASK FORCE, THE DIRECTOR OF THE OFFICE SHALL STRIVE TO ENSURE GEOGRAPHIC DIVERSITY.

(f) SUBSECTIONS (8)(a), (8)(b), (8)(d), AND (8)(e) AND THIS SUBSECTION (8)(f) ARE REPEALED, EFFECTIVE JULY 1, 2025.

(9) **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 24-38.5-112 (3)(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 24-38.5-112 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 24-38.5-112 (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 THE BUILDING PERFORMANCE PROGRAM DEFINED IN SECTION 24-38.5-112 (3)(b) AND DESCRIBED IN THAT SECTION AND SECTION 25-7-142.

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

24-38.5-112. 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 ADMINISTER THE BUILDING PERFORMANCE PROGRAM BY:

(I) CREATING A DATABASE OF COVERED BUILDINGS AND OF OWNERS REQUIRED TO COMPLY WITH THE BUILDING PERFORMANCE PROGRAM;

(II) TRACKING COMPLIANCE WITH THE BUILDING PERFORMANCE PROGRAM;

(III) MAINTAINING A LIST OF NONCOMPLIANT OWNERS; AND

(IV) IN A FORM AND MANNER DETERMINED BY THE OFFICE, IN CONSULTATION WITH THE DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, PERIODICALLY PROVIDING THE DIVISION WITH A LIST OF NONCOMPLIANT OWNERS FOR THE DIVISION'S ENFORCEMENT OF THE BUILDING PERFORMANCE PROGRAM PURSUANT TO SECTION 25-7-122 (1)(i).

(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 OWNER OF A PUBLIC BUILDING IS EXEMPT FROM PAYING THE ANNUAL FEE DESCRIBED IN SUBSECTION (1)(e)(I) OF THIS SECTION.

(2) TO IMPLEMENT THE BUILDING PERFORMANCE PROGRAM, THE COLORADO ENERGY OFFICE SHALL ASSIST BUILDING OWNERS TO INCREASE ENERGY EFFICIENCY AND REDUCE GREENHOUSE GAS EMISSIONS FROM THEIR BUILDINGS, INCLUDING BY PROVIDING OUTREACH, TRAINING, TECHNICAL ASSISTANCE, AND GRANTS TO BUILDING OWNERS TO HELP THEIR BUILDINGS COME INTO COMPLIANCE WITH THE BUILDING PERFORMANCE PROGRAM.

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

(a) "BENCHMARKING DATA" HAS THE MEANING SET FORTH IN SECTION 25-7-142 (2)(d).

(b) "BUILDING PERFORMANCE PROGRAM" MEANS THE BENCHMARKING REQUIREMENTS SET FORTH IN SECTION 25-7-142 (3) AND PERFORMANCE STANDARD REQUIREMENTS SET BY THE COMMISSION BY RULE PURSUANT TO SECTION 25-7-142 (8)(c).

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

(d) "COMMISSION" MEANS THE AIR QUALITY CONTROL COMMISSION CREATED IN SECTION 25-7-104 (1).

(e) "COVERED BUILDING" HAS THE MEANING SET FORTH IN SECTION 25-7-142 (2)(j).

(f) "OWNER" HAS THE MEANING SET FORTH IN SECTION 25-7-142 (2)(r).

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. AS PART OF THE REQUIREMENT THAT THE COMMISSION ADOPT RULES TO ESTABLISH PERFORMANCE STANDARDS PURSUANT TO SECTION 25-7-142 (8)(c), THE COMMISSION SHALL ESTABLISH BY RULE, WITH REGARD TO A VIOLATION OF THE PERFORMANCE STANDARDS, CIVIL PENALTIES IN AN AMOUNT NOT TO EXCEED TWO THOUSAND DOLLARS FOR A FIRST VIOLATION AND FIVE THOUSAND DOLLARS FOR A SUBSEQUENT VIOLATION.

(II) THE DIVISION SHALL NOT ASSESS A CIVIL PENALTY FOR A VIOLATION RELATED TO A PUBLIC BUILDING.

(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)(j).

(B) "OWNER" HAS THE MEANING SET FORTH IN SECTION 25-7-142 (2)(r).

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~~ COST 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 ~~forfeited~~ FORFEIT to ~~such~~ THE board pursuant to ~~paragraph (c) 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~~ THAT THE BOARD MAKES MUST 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.

Approved: June 24, 2021