

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 14-0474.01 Esther van Mourik x4215

SENATE BILL 14-186

SENATE SPONSORSHIP

Schwartz and Kerr,

HOUSE SPONSORSHIP

Tyler and Hamner,

Senate Committees
Local Government

House Committees
Transportation & Energy

HOUSE
3rd Reading Unamended
May 3, 2014

HOUSE
Amended 2nd Reading
May 2, 2014

A BILL FOR AN ACT

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

SENATE
3rd Reading Unamended
April 23, 2014

SENATE
Amended 2nd Reading
April 22, 2014

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://www.leg.state.co.us/billsummaries>.)

The bill specifies that the Colorado energy office may, within existing resources and without creating a financial obligation to the state, ascertain efficiency projects that can be aggregated to create a larger portfolio of diverse efficiency projects with costs totaling an amount that

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

in a favorable financial market will attract the investment of private sector banks or investors. The bill then specifies that if such a larger portfolio of diverse efficiency projects is 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 1%, that must be credited to the efficient schools and communities performance contracting fund.

The bill defines "efficiency projects" as including one or more projects in a small or rural community in the state of a school district, special district, or county or municipality (community entity), such as:

- ! Installing equipment and related infrastructure that will help defray energy costs;
- ! Improving the energy efficiency of a building;
- ! Reducing water usage or consumption;
- ! Re-engineering or improving water or wastewater treatment facilities; or
- ! Improving the energy usage of motor vehicle fleets or community entity-owned fueling stations for such motor vehicle fleets.

The bill then specifies that once there is sufficient money in the efficient schools and communities performance contracting fund from the cost of issuance fee, in the event a community entity's efficiency project is not financed, the department of local affairs in consultation with the Colorado energy office may award a grant to such community entity for a reimbursement of a portion of the technical energy audit completed by the community entity. The bill also specifies that a prequalified energy service company may also seek a grant for a portion of the energy service company's costs if an efficiency project is not financed. The bill further specifies that all grants awarded by the department of local affairs must be prioritized by need and may not exceed the available cost of issuance fees.

The bill creates the efficient schools and communities performance contracting fund.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 24-38.5-108 as
3 follows:

4 **24-38.5-108. Aggregation of efficiency or renewable energy**
5 **projects in small or rural schools and small or rural communities in**
6 **order to attract private sector investment through performance**
7 **contracting - legislative declaration - definitions.** (1) THE GENERAL

1 ASSEMBLY HEREBY FINDS AND DECLARES THAT:

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

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

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

15 (d) SINCE MUCH OF THE INFRASTRUCTURE IN SMALL OR RURAL
16 COMMUNITIES IS OUTDATED, COSTLY TO MAINTAIN, AND ENERGY
17 INTENSIVE, EFFICIENCY UPGRADES ARE NEEDED FOR BUILDINGS,
18 MECHANICAL EQUIPMENT, ELECTRICAL SYSTEMS, LIGHTING, WATER,
19 MOTOR VEHICLE FLEETS, AND COMMUNITY ENTITY-OWNED FUELING
20 STATIONS FOR SUCH MOTOR VEHICLE FLEETS;

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

24 (f) AGGREGATING EFFICIENCY PROJECTS OR RENEWABLE ENERGY
25 PROJECTS IN SMALL OR RURAL COMMUNITIES INTO A DYNAMIC
26 MULTIDIMENSIONAL PORTFOLIO OF AN ACCEPTABLE SIZE TO ATTRACT
27 PRIVATE SECTOR FINANCING TO SUCH COMMUNITIES WITHOUT CREATING

1 AN OBLIGATION OF THE STATE WILL OPEN UP THE FINANCIAL MARKET FOR
2 PERFORMANCE CONTRACTING IN SUCH COMMUNITIES, WILL ENGAGE THE
3 USE OF LOCAL CONTRACTORS, AND WILL CREATE LOCAL JOBS; AND

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

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

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

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

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

21 (I) INSTALLING EQUIPMENT AND RELATED INFRASTRUCTURE THAT
22 WILL HELP DEFRAY ENERGY COSTS;

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

27 (III) REDUCING WATER USAGE OR CONSUMPTION;

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

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

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

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

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

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

25 (4) (a) WITHOUT CREATING A FINANCIAL OBLIGATION TO THE
26 STATE, THE OFFICE MAY, WITHIN EXISTING RESOURCES, WORK TOGETHER
27 WITH ITS PREQUALIFIED ENERGY SERVICE COMPANIES TO ASCERTAIN

1 EFFICIENCY PROJECTS OR RENEWABLE ENERGY PROJECTS THAT CAN BE
2 AGGREGATED TO CREATE A LARGER PORTFOLIO OF DIVERSE EFFICIENCY
3 PROJECTS OR RENEWABLE ENERGY PROJECTS WITH COSTS TOTALING AN
4 AMOUNT THAT IN A FAVORABLE FINANCIAL MARKET WILL ATTRACT THE
5 INVESTMENT OF PRIVATE SECTOR BANKS OR INVESTORS THROUGH
6 PERFORMANCE CONTRACTS. IN THE EVENT SUCH A LARGER PORTFOLIO OF
7 DIVERSE EFFICIENCY PROJECTS OR RENEWABLE ENERGY PROJECTS IS
8 ESTABLISHED PURSUANT TO THIS SUBSECTION (4) AND FINANCED, THE
9 FINANCING DOCUMENTS MUST INCLUDE A COST OF ISSUANCE FEE PAYABLE
10 TO THE DEPARTMENT OF LOCAL AFFAIRS OF A PERCENTAGE OF THE
11 ISSUANCE, NOT TO EXCEED ONE PERCENT, THAT MUST BE CREDITED TO THE
12 EFFICIENT SCHOOLS AND COMMUNITIES PERFORMANCE CONTRACTING
13 FUND.

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

1 SEEK AND THE DEPARTMENT OF LOCAL AFFAIRS, IN CONSULTATION WITH
2 THE OFFICE, MAY AWARD A GRANT FROM THE COST OF ISSUANCE FEES
3 CREDITED TO THE FUND FOR A PORTION OF THE ENERGY SERVICE
4 COMPANY'S COSTS IF AN EFFICIENCY PROJECT OR RENEWABLE ENERGY
5 PROJECT IS NOT FINANCED. ALL GRANTS AWARDED BY THE DEPARTMENT
6 OF LOCAL AFFAIRS PURSUANT TO THIS PARAGRAPH (b) MUST BE
7 PRIORITIZED BY NEED AND MAY NOT EXCEED THE AVAILABLE COST OF
8 ISSUANCE FEES.

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

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

20 (7) NOTWITHSTANDING THE REQUIREMENTS OF SECTION
21 24-75-402, THERE IS HEREBY CREATED IN THE STATE TREASURY THE
22 EFFICIENT SCHOOLS AND COMMUNITIES PERFORMANCE CONTRACTING
23 FUND, REFERRED TO IN THIS SECTION AS THE "FUND", CONSISTING OF THE
24 COST OF ISSUANCE FEES CREDITED TO THE DEPARTMENT OF LOCAL AFFAIRS
25 PURSUANT TO PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION. THE
26 MONEYS IN THE FUND ARE CONTINUOUSLY APPROPRIATED BY THE
27 GENERAL ASSEMBLY TO THE DEPARTMENT OF LOCAL AFFAIRS FOR

1 AWARDING GRANTS AS SPECIFIED IN PARAGRAPH (b) OF SUBSECTION (4) OF
2 THIS SECTION. IN THE EVENT THE DEPARTMENT OF LOCAL AFFAIRS CANNOT
3 IMPLEMENT THE GRANT PROGRAM WITHIN EXISTING RESOURCES, THEN THE
4 DEPARTMENT OF LOCAL AFFAIRS MAY EXPEND UP TO FIVE PERCENT
5 ANNUALLY OF THE MONEYS IN THE FUND TO OFFSET THE COSTS INCURRED
6 IN IMPLEMENTING THE GRANT PROGRAM. THE STATE TREASURER MAY
7 INVEST ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSE OF
8 THIS SECTION AS PROVIDED BY LAW. THE STATE TREASURER SHALL CREDIT
9 ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT
10 OF MONEYS IN THE FUND TO THE FUND. ANY UNEXPENDED AND
11 UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A
12 FISCAL YEAR REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR
13 TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

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

16 **24-75-402. Cash funds - limit on uncommitted reserves -**
17 **reduction in amount of fees - exclusions - repeal.** (5) Notwithstanding
18 any provision of this section to the contrary, the following cash funds are
19 excluded from the limitations specified in this section:

20 (bb) THE EFFICIENT SCHOOLS AND COMMUNITIES PERFORMANCE
21 CONTRACTING FUND CREATED IN SECTION 24-38.5-108 (7).

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