

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0953.01 Jason Gelender

SENATE BILL 10-207

SENATE SPONSORSHIP

Johnston and Romer,

HOUSE SPONSORSHIP

(None),

Senate Committees

Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING AUTHORIZATION FOR THE STATE TREASURER TO ENTER**
102 **INTO LEASE-PURCHASE AGREEMENTS ON BEHALF OF THE STATE**
103 **TO FINANCE CAPITAL CONSTRUCTION PROJECTS PROPOSED BY**
104 **THE GOVERNOR'S ENERGY OFFICE THAT IMPROVE THE ENERGY**
105 **EFFICIENCY OF STATE CAPITAL FACILITIES.**

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>.)

Section 1 of the bill:

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.

- ! Authorizes the state treasurer, with sole discretion as to timing, to enter into lease-purchase agreements on behalf of the state to finance capital construction projects that improve the energy efficiency of state buildings or facilities;
- ! Specifies the process, including required executive agency and legislative committee approvals, for determining which projects are to be financed through the lease-purchase agreements;
- ! Authorizes the issuance of certificates of participation (COPs) in connection with the lease-purchase agreements and limits the total par value of the COPs that may be issued to \$73,000,000;
- ! Requires a lease-purchase agreement to include provisions that:
 - ! Specify that payment of the state's obligations under the agreement are subject to annual appropriation and do not create any indebtedness of the state;
 - ! Indicate that the sole security available to the lessor if the state does not renew the agreement is the property that is the subject of the nonrenewed agreement; and
 - ! Allow the state to receive title to the real and personal property that is the subject of the agreement on or prior to the expiration of the entire term of the agreement, including all optional renewal terms;
- ! Allows only a building or facility subject to an energy performance contract that is under consideration by the office of the state architect as of 30 days following the effective date of the bill to be the subject of a lease-purchase agreement;
- ! Specifies that interest paid under a lease-purchase agreement, including interest represented by COPs, is exempt from state income tax;
- ! Requires the state treasurer to coordinate with the office of state planning and budgeting in regard to the schedule of lease payments required in connection with any lease-purchase agreement; and
- ! Creates the energy efficiency project fund and specifies that:
 - ! The fund shall consist of moneys received by the state from any sale of COPs, energy cost savings resulting from capital construction projects financed through lease-purchase agreements, any other

legally available moneys that may be appropriated or transferred to the fund, and all interest and income derived from the deposit and investment of moneys in the fund; and

! Moneys in the fund may be expended solely for the purposes of completing projects being financed by lease-purchase agreements and paying the obligations of the state under such agreements.

Section 2 of the bill modifies the definition of the terms "energy performance contract" and "utility cost-savings measure". **Section 3** of the bill makes a conforming amendment.

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

2 **SECTION 1.** Article 38.5 of title 24, Colorado Revised Statutes,
3 is amended BY THE ADDITION OF A NEW SECTION to read:

4 **24-38.5-104. Financing of capital projects to make state**
5 **government more energy efficient - lease-purchase agreements -**
6 **legislative declaration - definition.** (1) AS USED IN THIS SECTION,
7 UNLESS THE CONTEXT OTHERWISE REQUIRES, "UTILITY COST-SAVINGS
8 CONTRACT" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION
9 24-30-2001 (6).

10 (2) (a) IN ORDER TO MAKE STATE GOVERNMENT MORE ENERGY
11 EFFICIENT IN ACCORDANCE WITH SECTION 24-38.5-102, THE GOVERNOR'S
12 ENERGY OFFICE MAY PROPOSE A PRIORITIZED LIST OF PROJECTS
13 ASSOCIATED WITH CURRENT UTILITY COST-SAVINGS CONTRACTS THAT
14 WILL IMPROVE THE ENERGY EFFICIENCY OF STATE BUILDINGS OR
15 FACILITIES AND THAT ARE PROPOSED TO BE CONSTRUCTED OR IMPROVED
16 USING FINANCING PROVIDED IN ACCORDANCE WITH SUBSECTION (3) OF
17 THIS SECTION. IF THE GOVERNOR'S ENERGY OFFICE CREATES A
18 PRIORITIZED LIST, THE PRIORITIZED LIST SHALL INCLUDE AN ESTIMATE OF
19 THE TOTAL AMOUNT OF ANNUAL UTILITY COST SAVINGS EXPECTED IF ALL

1 OF THE PROJECTS ON THE PRIORITIZED LIST ARE COMPLETED; DESCRIPTIONS
2 OF THE PROJECTS, THE AFFECTED BUILDINGS, AND THE IMPACT OF THE
3 PROJECTS ON TENANTS; A TIMELINE FOR IMPLEMENTATION; A DETAILED
4 BUDGET FOR EACH PROJECT; A LIST OF PROPERTIES RECOMMENDED FOR
5 USE AS COLLATERAL, WHICH SHALL INCLUDE ONLY PROPERTIES OPERATED
6 AND MAINTAINED BY AGENCIES THAT ARE RESPONSIBLE FOR THE
7 OPERATION AND MAINTENANCE OF AT LEAST ONE STATE BUILDING OR
8 FACILITY FOR WHICH A PROJECT IS BEING FINANCED IN ACCORDANCE WITH
9 SUBSECTION (3) OF THIS SECTION; ESTIMATES OF THE AMOUNT OF ANNUAL
10 UTILITY COST SAVINGS EXPECTED FOR EACH OF THE PROJECTS; AND
11 EXPECTED ANNUAL PAYMENTS FOR EACH PROJECT, INCLUDING THE
12 EXPECTED FUNDING SOURCES FOR SUCH PAYMENTS. THE GOVERNOR'S
13 ENERGY OFFICE SHALL SUBMIT THE PRIORITIZED LIST AND REFERENCED
14 SUPPORTING DOCUMENTS TO THE OFFICE OF STATE PLANNING AND
15 BUDGETING FOR REVIEW AND APPROVAL OR DISAPPROVAL. EXCEPT AS
16 OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (2), THE
17 OFFICE OF STATE PLANNING AND BUDGETING SHALL SUBMIT ANY PROJECTS
18 ON THE PRIORITIZED LIST THAT IT APPROVES TO THE CAPITAL
19 DEVELOPMENT COMMITTEE OF THE GENERAL ASSEMBLY FOR REVIEW AND
20 APPROVAL OR DISAPPROVAL. SUBJECT TO THE LIMITATIONS SPECIFIED IN
21 SUBSECTION (3) OF THIS SECTION, IF THE CAPITAL DEVELOPMENT
22 COMMITTEE DETERMINES AFTER REVIEWING THE PROJECTS SUBMITTED TO
23 IT FOR ITS REVIEW AND APPROVAL OR DISAPPROVAL THAT IT IS
24 APPROPRIATE TO AUTHORIZE THE STATE TREASURER TO PURSUE
25 FINANCING PROVIDED IN ACCORDANCE WITH SUBSECTION (3) OF THIS
26 SECTION TO FUND SOME OR ALL OF THE PROJECTS OR IF THE OFFICE OF
27 STATE PLANNING AND BUDGETING HAS APPROVED PROJECTS FOR

1 BUILDINGS OR FACILITIES OPERATED AND MAINTAINED BY THE
2 DEPARTMENT OF TRANSPORTATION AND SUBMITTED SUCH PROJECTS TO
3 THE COMMITTEE FOR INFORMATIONAL PURPOSES ONLY PURSUANT TO
4 PARAGRAPH (b) OF THIS SUBSECTION (2), THE COMMITTEE SHALL PROVIDE
5 A LETTER TO THE GOVERNOR'S ENERGY OFFICE, THE OFFICE OF STATE
6 PLANNING AND BUDGETING, THE JOINT BUDGET COMMITTEE OF THE
7 GENERAL ASSEMBLY, AND THE STATE TREASURER THAT SPECIFIES THE
8 FINAL APPROVED PRIORITY OF THE PROJECTS.

9 (b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF
10 THIS SUBSECTION (2), ANY PROJECTS ON THE PRIORITIZED LIST PROPOSED
11 BY THE GOVERNOR'S ENERGY OFFICE AND APPROVED BY THE OFFICE OF
12 STATE PLANNING AND BUDGETING FOR BUILDINGS OR FACILITIES
13 OPERATED AND MAINTAINED BY THE DEPARTMENT OF TRANSPORTATION
14 SHALL BE DEEMED TO BE FINALLY APPROVED AND SHALL BE INCLUDED ON
15 THE PRIORITIZED LIST SUBMITTED TO THE CAPITAL DEVELOPMENT
16 COMMITTEE FOR INFORMATIONAL PURPOSES ONLY.

17 (3) (a) UPON RECEIPT OF THE LETTER FROM THE CAPITAL
18 DEVELOPMENT COMMITTEE REGARDING ITS REVIEW PURSUANT TO
19 SUBSECTION (2) OF THIS SECTION, THE STATE TREASURER MAY ENTER INTO
20 ONE OR MORE LEASE-PURCHASE AGREEMENTS ON BEHALF OF THE STATE
21 IN ORDER TO GENERATE THE PROCEEDS NEEDED TO COMPLETE THE
22 PROJECTS. A LEASE-PURCHASE AGREEMENT:

23 (I) MAY BE ENTERED INTO WITH ANY FOR-PROFIT OR NONPROFIT
24 CORPORATION, TRUST, OR COMMERCIAL BANK AS A TRUSTEE, AS LESSOR;

25 (II) SHALL BE LIMITED TO A TOTAL PAR VALUE, INCLUDING COSTS
26 OF ISSUANCE, OF ALL SUCH INSTRUMENTS ISSUED, DISTRIBUTED, AND SOLD
27 OF NO MORE THAN SEVENTY-THREE MILLION DOLLARS;

1 (III) SHALL INCLUDE PROVISIONS THAT:

2 (A) SPECIFY THAT ALL PAYMENT OBLIGATIONS OF THE STATE
3 UNDER THE LEASE-PURCHASE AGREEMENT ARE SUBJECT TO ANNUAL
4 APPROPRIATION BY THE GENERAL ASSEMBLY AND THAT OBLIGATIONS
5 SHALL NOT BE DEEMED OR CONSTRUED AS CREATING AN INDEBTEDNESS OF
6 THE STATE WITHIN THE MEANING OF ANY PROVISION OF THE STATE
7 CONSTITUTION OR THE LAWS OF THE STATE CONCERNING OR LIMITING THE
8 CREATION OF INDEBTEDNESS BY THE STATE;

9 (B) INDICATE THAT IF THE STATE DOES NOT RENEW THE
10 AGREEMENT, THE SOLE SECURITY AVAILABLE TO THE LESSOR SHALL BE
11 THE PROPERTY THAT IS THE SUBJECT OF THE NONRENEWED AGREEMENT;
12 AND

13 (C) ALLOW THE STATE TO RECEIVE TITLE TO THE REAL AND
14 PERSONAL PROPERTY THAT IS THE SUBJECT OF THE AGREEMENT ON OR
15 PRIOR TO THE EXPIRATION OF THE ENTIRE TERM OF THE AGREEMENT,
16 INCLUDING ALL OPTIONAL RENEWAL TERMS;

17 (IV) MAY INCLUDE:

18 (A) PROVISIONS FOR THE ISSUANCE, DISTRIBUTION, AND SALE OF
19 INSTRUMENTS EVIDENCING RIGHTS TO RECEIVE RENTALS AND OTHER
20 PAYMENTS MADE AND TO BE MADE UNDER THE AGREEMENT. SUCH
21 INSTRUMENTS SHALL NOT BE NOTES, BONDS, OR ANY OTHER EVIDENCE OF
22 INDEBTEDNESS OF THE STATE WITHIN THE MEANING OF ANY PROVISION OF
23 THE STATE CONSTITUTION OR THE LAWS OF THE STATE CONCERNING OR
24 LIMITING THE CREATION OF INDEBTEDNESS BY THE STATE.

25 (B) SUCH OTHER TERMS, PROVISIONS, AND CONDITIONS AS THE
26 STATE TREASURER MAY DEEM APPROPRIATE.

27 (b) ONLY A BUILDING OR FACILITY SUBJECT TO AN ENERGY

1 PERFORMANCE CONTRACT, AS DEFINED IN SECTION 24-30-2001 (1), THAT
2 IS UNDER CONSIDERATION BY THE OFFICE OF THE STATE ARCHITECT AS OF
3 THIRTY DAYS FOLLOWING THE EFFECTIVE DATE OF THIS PARAGRAPH (b),
4 MAY BE THE SUBJECT OF A LEASE-PURCHASE AGREEMENT ENTERED INTO
5 BY THE STATE TREASURER PURSUANT TO THIS SUBSECTION (3).

6 (c) THE STATE, ACTING BY AND THROUGH THE STATE TREASURER,
7 MAY ENTER INTO ANCILLARY AGREEMENTS AND INSTRUMENTS DEEMED
8 NECESSARY OR APPROPRIATE IN CONNECTION WITH A LEASE-PURCHASE
9 AGREEMENT AUTHORIZED PURSUANT TO THIS SUBSECTION (3), INCLUDING
10 BUT NOT LIMITED TO DEEDS, LEASES, SUBLEASES, EASEMENTS, OR OTHER
11 INSTRUMENTS RELATING TO THE REAL PROPERTY ON WHICH THE FACILITIES
12 ARE LOCATED.

13 (d) THE PROVISIONS OF SECTION 24-30-202 (5) (b) SHALL NOT
14 APPLY TO A LEASE-PURCHASE AGREEMENT OR ANY ANCILLARY
15 AGREEMENT OR INSTRUMENT AUTHORIZED PURSUANT TO THIS SUBSECTION
16 (3). ANY PROVISION OF THE FISCAL RULES PROMULGATED PURSUANT TO
17 SECTION 24-30-202 (1) AND (13) THAT THE STATE CONTROLLER DEEMS TO
18 BE INCOMPATIBLE OR INAPPLICABLE WITH RESPECT TO SUCH A
19 LEASE-PURCHASE AGREEMENT OR ANCILLARY AGREEMENT OR
20 INSTRUMENT MAY BE WAIVED BY THE CONTROLLER OR HIS OR HER
21 DESIGNEE WITHIN THE OFFICE OF THE STATE CONTROLLER.

22 (e) INTEREST PAID UNDER A LEASE-PURCHASE AGREEMENT,
23 INCLUDING INTEREST REPRESENTED BY SUCH INSTRUMENTS, SHALL BE
24 EXEMPT FROM STATE INCOME TAX.

25 (f) NOTWITHSTANDING THE AUTHORITY OF THE CAPITAL
26 DEVELOPMENT COMMITTEE OF THE GENERAL ASSEMBLY TO AUTHORIZE,
27 AFTER APPROVAL BY THE OFFICE OF STATE PLANNING AND BUDGETING,

1 THE STATE TREASURER TO ENTER INTO LEASE-PURCHASE AGREEMENTS ON
2 BEHALF OF THE STATE, IN ORDER TO ENSURE THAT LEASE-PURCHASE
3 AGREEMENTS ARE ENTERED INTO UNDER FAVORABLE FINANCIAL MARKET
4 CONDITIONS, THE STATE TREASURER SHALL HAVE SOLE DISCRETION TO
5 DETERMINE THE TIMING OF THE STATE TREASURER'S ENTRY INTO ANY
6 LEASE-PURCHASE AGREEMENT ON BEHALF OF THE STATE PURSUANT TO
7 THIS SUBSECTION (3).

8 (g) THE STATE TREASURER SHALL COORDINATE WITH THE OFFICE
9 OF STATE PLANNING AND BUDGETING IN REGARD TO THE SCHEDULE OF
10 LEASE PAYMENTS REQUIRED IN CONNECTION WITH ANY LEASE-PURCHASE
11 AGREEMENT.

12 (h) ONCE A LEASE-PURCHASE AGREEMENT HAS BEEN EXECUTED,
13 THE STATE TREASURER SHALL SUBMIT THE SCHEDULE FOR ANNUAL
14 PAYMENTS TO THE OFFICE OF STATE PLANNING AND BUDGETING AND THE
15 JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY. THE OFFICE OF
16 STATE PLANNING AND BUDGETING SHALL SUBMIT A BUDGET REQUEST TO
17 THE JOINT BUDGET COMMITTEE TO REDUCE ANY CORRESPONDING
18 OPERATING APPROPRIATIONS FOR STATE CAPITAL FACILITIES REALIZING
19 UTILITY COST SAVINGS FROM PROJECTS FINANCED BY LEASE-PURCHASE
20 AGREEMENTS AND TO APPROPRIATE ANNUAL PAYMENTS IN THE CAPITAL
21 CONSTRUCTION SECTION OF THE BUDGET FOR THOSE FACILITIES FOR WHICH
22 OPERATION AND MAINTENANCE IS FUNDED IN WHOLE OR IN PART WITH
23 MONEYS THAT ARE SUBJECT TO STATE APPROPRIATION. UPON RECEIPT OF
24 THE BUDGET REQUEST FROM THE OFFICE OF STATE PLANNING AND
25 BUDGETING, THE JOINT BUDGET COMMITTEE SHALL RECOMMEND TO THE
26 GENERAL ASSEMBLY AN APPROPRIATION FOR ANNUAL PAYMENTS IN THE
27 CAPITAL CONSTRUCTION SECTION OF THE BUDGET AND A REDUCTION OF

1 THE SAME AMOUNT IN THE APPLICABLE UTILITIES LINE ITEM OF THE
2 OPERATING BUDGET. THE OFFICE OF STATE PLANNING AND BUDGETING
3 AND THE JOINT BUDGET COMMITTEE RECOMMENDATION SHALL ALSO
4 INCLUDE AN APPROPRIATION OF THE ORIGINAL FUNDING SOURCES OF THE
5 UTILITY LINE ITEM EQUAL TO THE IDENTIFIED SAVINGS FOR TRANSFER TO
6 THE ENERGY EFFICIENCY PROJECT PROCEEDS FUND CREATED IN
7 SUBSECTION (4) OF THIS SECTION UNLESS SUCH TRANSFER IS PROHIBITED
8 BY THE REQUIREMENTS OF THE ORIGINAL FUNDING SOURCE. IT IS THE
9 INTENT OF THE GENERAL ASSEMBLY THAT THE UTILITIES LINE ITEM
10 REDUCTION BE PERMANENT, AND THAT ANY FUTURE APPROPRIATED
11 INCREASES BE DEFENDED IN RELATION TO THE BALANCE FOR UTILITIES
12 THAT REMAIN IN THE LINE.

13 (4) THE ENERGY EFFICIENCY PROJECT PROCEEDS FUND IS HEREBY
14 CREATED IN THE STATE TREASURY. THE PRINCIPAL OF THE FUND SHALL
15 CONSIST OF MONEYS RECEIVED BY THE STATE IN CONNECTION WITH ANY
16 LEASE-PURCHASE AGREEMENTS ENTERED INTO PURSUANT TO SUBSECTION
17 (3) OF THIS SECTION AND ANY OTHER LEGALLY AVAILABLE MONEYS THAT
18 MAY BE APPROPRIATED OR TRANSFERRED TO THE FUND. ALL INTEREST
19 AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS
20 IN THE FUND SHALL BE CREDITED TO THE FUND. ANY UNEXPENDED AND
21 UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A
22 FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR
23 TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. MONEYS IN
24 THE FUND THAT WERE RECEIVED BY THE STATE IN CONNECTION WITH ANY
25 LEASE-PURCHASE AGREEMENT AND THAT ARE TRUSTEE FUNDS MAY BE
26 EXPENDED BY THE STATE TREASURER, AND OTHER MONEYS IN THE FUND
27 NOT IDENTIFIED FOR FUNDING ANNUAL PAYMENTS OR TO BE USED TO

1 DEFRAY ANY INCREMENTAL COSTS INCURRED BY THE STATE CONTROLLER
2 IN MANAGING ACCOUNTING AND REPORTING REQUIREMENTS RELATED TO
3 LEASE-PURCHASE AGREEMENTS ENTERED INTO PURSUANT TO SUBSECTION
4 (3) OF THIS SECTION ARE HEREBY CONTINUOUSLY APPROPRIATED TO THE
5 STATE TREASURER, FOR THE PURPOSE OF MAKING DISBURSEMENTS
6 NECESSARY TO COMPLETE PROJECTS ASSOCIATED WITH CURRENT UTILITY
7 COST-SAVINGS CONTRACTS THAT ARE AUTHORIZED TO BE FINANCED
8 THROUGH LEASE-PURCHASE AGREEMENTS ENTERED INTO BY THE STATE
9 TREASURER ON BEHALF OF THE STATE PURSUANT TO SUBSECTION (3) OF
10 THIS SECTION. MONEYS IN THE FUND SHALL ALSO BE SUBJECT TO
11 APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE PURPOSE OF PAYING
12 THE PRINCIPAL OF AND INTEREST ON AND DEFRAYING ANY INCREMENTAL
13 COSTS INCURRED BY THE STATE CONTROLLER IN MANAGING ACCOUNTING
14 AND REPORTING REQUIREMENTS RELATED TO SUCH LEASE-PURCHASE
15 AGREEMENTS.

16 **SECTION 2.** 24-30-2001 (1) (b) and (7) (o), Colorado Revised
17 Statutes, are amended to read:

18 **24-30-2001. Definitions.** As used in this part 20, unless the
19 context otherwise requires:

20 (1) "Energy performance contract" means a contract for
21 evaluations, recommendations, or implementation of one or more utility
22 cost-savings measures designed to produce utility cost savings or
23 operation and maintenance cost savings, which contract:

24 (b) Provides that the amount of actual savings for each year during
25 the contract period shall exceed annual contract payments, including
26 maintenance costs, to be made during such year by the state agency
27 contracting for the utility cost-savings measures; except that, FOR THE

1 PURPOSES OF THIS PART 20 ONLY, THE TERM "ANNUAL CONTRACT
2 PAYMENTS" DOES NOT INCLUDE MONEYS RECEIVED BY THE STATE FROM
3 REBATES, GIFTS, GRANTS, OR DONATIONS SPECIFICALLY DESIGNATED BY
4 THE GIFTING, GRANTING, OR DONATING PARTY FOR THE DESIGN OR
5 IMPLEMENTATION OF A UTILITY COST-SAVINGS MEASURE OR STATE
6 MONEYS THAT HAVE BEEN SPECIFICALLY APPROPRIATED IN A DISTINCT
7 LINE ITEM, OR, IN THE CASE OF THE DEPARTMENT OF TRANSPORTATION,
8 OTHERWISE SET ASIDE IN THE DEPARTMENT'S BUDGET, FOR THE DESIGN OR
9 IMPLEMENTATION OF A UTILITY COST-SAVINGS MEASURE THAT IS WHOLLY
10 ADDRESSED WITHIN THE SCOPE OF THE UTILITY COST-SAVINGS CONTRACT.

11 (7) "Utility cost-savings measure" means any installation,
12 modification, or service that is designed to reduce energy consumption
13 and related operating costs in buildings and other facilities and includes,
14 but is not limited to, the following:

15 (o) Any other LOCATION, ORIENTATION, OR DESIGN CHOICE
16 RELATED TO, OR installation, modification of installation, or remodeling
17 of, building infrastructure improvements that produce utility or
18 operational cost savings for their appointed functions in compliance with
19 applicable state and local building codes.

20 **SECTION 3.** 24-30-2003 (1) (a), Colorado Revised Statutes, is
21 amended to read:

22 **24-30-2003. Utility cost-savings contracts.** (1) A state agency
23 may enter into a utility cost-savings contract with any person or entity
24 experienced in the design and implementation of utility cost-savings
25 measures for buildings or other facilities or with the entity or person who
26 performed the energy analysis and recommendations pursuant to section
27 24-30-2002 if:

1 (a) The energy analysis and recommendations made pursuant to
2 section 24-30-2002 indicate that the expected annual CONTRACT payments
3 required under the UTILITY COST-SAVINGS contract and any additional
4 maintenance costs for one or more utility cost-savings measures are
5 expected to be equal to or less than the sum of the utility cost savings and
6 operation and maintenance cost savings achieved by the implementation
7 of such measures on an annual basis; and

8 **SECTION 4. Safety clause.** The general assembly hereby finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, and safety.