

NOTE: The governor signed this measure on 6/5/2013.

An Act

SENATE BILL 13-254

BY SENATOR(S) Jones, Guzman, Schwartz;
also REPRESENTATIVE(S) Tyler, Levy, Court, Fields, Hullinghorst,
Labuda, Lee, Mitsch Bush, Pabon, Primavera, Salazar, Schafer, Williams.

CONCERNING AN EXPANSION OF THE UTILITY COST-SAVINGS MEASURES LAW
TO ALLOW A GOVERNMENTAL ENTITY TO ENTER INTO A VEHICLE
FLEET MAINTENANCE AND FUEL COST-SAVINGS CONTRACT.

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

SECTION 1. In Colorado Revised Statutes, 24-30-2001, **amend** (1), (2), (3) introductory portion, and (3) (a); and **add** (1.3), (1.5), (8), (9), and (10) as follows:

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~~

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

~~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; except that, for the purposes of this part 20 only, the term "annual contract payments" does not include moneys received by the state from rebates, gifts, grants, or donations specifically designated by the gifting, granting, or donating party for the design or implementation of a utility cost-savings measure or state moneys that have been specifically appropriated in a distinct line item, or, in the case of the department of transportation, otherwise set aside in the department's budget, for the design or implementation of a utility cost-savings measure that is wholly addressed within the scope of the utility cost-savings contract;~~

~~(c) Requires the party entering into the energy performance contract 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. "ENERGY COST-SAVINGS CONTRACT" MEANS A UTILITY COST-SAVINGS CONTRACT OR A VEHICLE FLEET OPERATIONAL AND FUEL COST-SAVINGS CONTRACT.~~

(1.3) "ENERGY COST-SAVINGS MEASURE" MEANS A UTILITY COST-SAVINGS MEASURE OR A VEHICLE FLEET OPERATIONAL AND FUEL COST-SAVINGS MEASURE.

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

OPERATIONAL AND FUEL COST SAVINGS, WHICH CONTRACT:

(a) SETS FORTH SAVINGS ATTRIBUTABLE TO THE CALCULATED ENERGY 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 ENERGY COST-SAVINGS MEASURES; EXCEPT THAT, FOR THE PURPOSES OF THIS PART 20 ONLY, THE TERM "ANNUAL CONTRACT PAYMENTS" DOES NOT INCLUDE MONEYS RECEIVED BY THE STATE FROM REBATES, GIFTS, GRANTS, OR DONATIONS SPECIFICALLY DESIGNATED BY THE GIFTING, GRANTING, OR DONATING PARTY FOR THE DESIGN OR IMPLEMENTATION OF AN ENERGY COST-SAVINGS MEASURE OR STATE MONEYS THAT HAVE BEEN SPECIFICALLY APPROPRIATED IN A DISTINCT LINE ITEM, OR, IN THE CASE OF THE DEPARTMENT OF TRANSPORTATION, OTHERWISE SET ASIDE IN THE DEPARTMENT'S BUDGET, FOR THE DESIGN OR IMPLEMENTATION OF AN ENERGY COST-SAVINGS MEASURE THAT IS WHOLLY ADDRESSED WITHIN THE SCOPE OF THE ENERGY COST-SAVINGS CONTRACT;

(c) REQUIRES THE PARTY ENTERING INTO THE ENERGY PERFORMANCE CONTRACT WITH THE STATE AGENCY TO PROVIDE A WRITTEN GUARANTEE THAT THE SUM OF ENERGY 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 (1.5); 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 ENERGY 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 OR ONE OR

MORE VEHICLE FLEET OPERATIONAL AND FUEL 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 ENERGY 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 ENERGY 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;

(8) "VEHICLE FLEET OPERATIONAL AND FUEL COST SAVINGS" MEANS A MEASURABLE DECREASE IN THE OPERATION AND MAINTENANCE COSTS OF STATE VEHICLES THAT IS ASSOCIATED WITH FUEL OR MAINTENANCE BASED ON HIGHER EFFICIENCY RATINGS OR ALTERNATIVE FUELING METHODS, INCLUDING BUT NOT LIMITED TO SAVINGS FROM THE REDUCTION IN MAINTENANCE REQUIREMENTS AND A REDUCTION IN OR THE ELIMINATION OF PROJECTED FUEL PURCHASE EXPENSES AS A DIRECT RESULT OF INVESTMENT IN HIGHER EFFICIENCY OR ALTERNATIVE FUEL VEHICLES OR VEHICLE OR CHARGING INFRASTRUCTURE.

(9) "VEHICLE FLEET OPERATIONAL AND FUEL COST-SAVINGS CONTRACT" MEANS AN ENERGY PERFORMANCE CONTRACT OR SHARED-SAVINGS CONTRACT OR ANY OTHER AGREEMENT IN WHICH VEHICLE FLEET OPERATIONAL AND FUEL COST SAVINGS ARE USED TO PAY FOR THE COST OF THE VEHICLE OR ASSOCIATED CAPITAL INVESTMENTS.

(10) "VEHICLE FLEET OPERATIONAL AND FUEL COST-SAVINGS MEASURE" MEANS ANY INSTALLATION, MODIFICATION, OR SERVICE THAT IS DESIGNED TO REDUCE ENERGY CONSUMPTION AND RELATED OPERATING COSTS IN VEHICLES AND INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING:

(a) VEHICLE PURCHASE OR LEASE COSTS EITHER IN FULL OR IN PART;

(b) CHARGING OR FUELING INFRASTRUCTURE TO APPROPRIATELY

CHARGE OR FUEL ALTERNATIVE FUEL VEHICLES INCLUDED IN AN ENERGY COST-SAVINGS CONTRACT.

SECTION 2. In Colorado Revised Statutes, **amend** 24-30-2002 as follows:

24-30-2002. Contracts for energy analysis and recommendations. (1) Subject to subsection (2) of this section, AND IN ACCORDANCE WITH SECTION 24-30-1104 (2), WHERE APPLICABLE, 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:

(a) Utility cost savings and operation and maintenance cost savings in buildings or other facilities owned or rented by the state agency; OR

(b) VEHICLE FLEET OPERATIONAL AND FUEL COST SAVINGS IN STATE FLEET VEHICLES.

(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~~ ENERGY cost-savings contract, that describe the content of the analysis, and that reserve the option of the state agency to negotiate a suitable ~~utility~~ ENERGY cost-savings contract.

(3) Such energy analysis and recommendations shall include THE FOLLOWING, AS APPLICABLE:

(a) 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; OR

(b) ESTIMATES OF THE AMOUNTS BY WHICH VEHICLE FLEET OPERATIONAL AND FUEL COST SAVINGS WOULD INCREASE AND ESTIMATES OF ALL COSTS OF SUCH VEHICLE FLEET OPERATIONAL AND FUEL COST-SAVINGS MEASURES.

(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, AS APPLICABLE, or payments may be deferred and incorporated into a subsequent ~~utility~~ ENERGY cost-savings contract.

SECTION 3. In Colorado Revised Statutes, 24-30-2003, **amend** (1), (2), (3), (4), (5), (8), (9), and (10) as follows:

24-30-2003. Energy cost-savings contracts. (1) A state agency may enter into a ~~utility~~ AN ENERGY cost-savings contract with any person or entity experienced in the design and implementation of utility cost-savings measures for buildings or other facilities, WITH ANY PERSON OR ENTITY EXPERIENCED IN THE CALCULATION AND ANALYSIS OF VEHICLE FLEET OPERATIONAL AND FUEL COST SAVINGS, or with the entity or person who performed the energy analysis and recommendations pursuant to section 24-30-2002 if:

(a) (I) IN THE CASE OF A UTILITY COST-SAVINGS CONTRACT, the energy analysis and recommendations made pursuant to section 24-30-2002 indicate that the expected annual contract payments required under the utility cost-savings 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~~ OR

(II) IN THE CASE OF A VEHICLE FLEET OPERATIONAL AND FUEL COST-SAVINGS CONTRACT, THE ENERGY ANALYSIS AND RECOMMENDATIONS MADE PURSUANT TO SECTION 24-30-2002 INDICATE THAT THE EXPECTED ANNUAL CONTRACT PAYMENTS REQUIRED UNDER THE VEHICLE FLEET OPERATIONAL AND FUEL COST-SAVINGS CONTRACT FOR ONE OR MORE VEHICLE FLEET OPERATIONAL AND FUEL COST-SAVINGS MEASURES ARE EXPECTED TO BE EQUAL TO OR LESS THAN THE SUM OF THE VEHICLE FLEET COST SAVINGS ACHIEVED BY THE IMPLEMENTATION OF SUCH MEASURES ON

AN ANNUAL BASIS; AND

(b) The state personnel director or the director's designee, WITH INPUT FROM THE DIRECTOR OF THE STATE ENERGY OFFICE, pursuant to criteria contained in procedures established by ~~such~~ THE STATE PERSONNEL 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~~ AN ENERGY 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~~ AN ENERGY 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~~ AN ENERGY cost-savings contract may include appropriate lease-purchase or other authorized financing agreements.

(4) The legislative authorization required by section 24-82-801 (1) shall not apply to a lease-purchase agreement in a ~~utility~~ AN ENERGY 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~~ AN ENERGY 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.

(8) All savings realized as a result of a ~~utility~~ AN ENERGY 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~~ ENERGY 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~~ ENERGY cost-savings contracts.

SECTION 4. In Colorado Revised Statutes, 24-75-108, **amend** (3) (b) as follows:

24-75-108. Intradepartmental transfers between appropriations - repeal. (3) (b) Any savings realized ~~in a utilities item resulting from a utility~~ ANENERGY 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.

SECTION 5. In Colorado Revised Statutes, 29-12.5-101, **amend** (3) introductory portion, (3) (a), (3) (b), (3) (c), (3) (e), (3) (h), (4), (4.5), and (5); and **add** (2.5), (10), (11), and (12) as follows:

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

(2.5) "ENERGY COST-SAVINGS CONTRACT" MEANS A UTILITY COST-SAVINGS CONTRACT OR A VEHICLE FLEET OPERATIONAL AND FUEL COST-SAVINGS CONTRACT.

(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, OR VEHICLE FLEET OPERATIONAL AND FUEL COST SAVINGS, which contract:

(a) Sets forth savings attributable to the calculated ~~utility~~ ENERGY 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 board contracting for utility ENERGY cost-savings measures;

(c) Requires the party entering into such contract with the board to provide a written guarantee that the sum of utility ENERGY 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);

(e) Provides that, 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 sum of utility ENERGY 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 savings;

(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 be less than the cost-weighted average useful life of utility ENERGY 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 a utility cost-savings measure and any attendant architectural and engineering consulting services; or

(b) Architectural and engineering consulting services related to utility cost savings; OR

(c) THE ACQUISITION AND INSTALLATION, BY PURCHASE, LEASE, LEASE-PURCHASE, LEASE WITH AN OPTION TO BUY, OR INSTALLMENT PURCHASE OF A VEHICLE FLEET OPERATIONAL AND FUEL COST-SAVINGS MEASURE.

(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 OR ONE OR MORE VEHICLE FLEET OPERATIONAL AND FUEL COST-SAVINGS MEASURES. The savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

(5) "Political subdivision" means a municipality, county, SPECIAL DISTRICT, or school district.

(10) "VEHICLE FLEET OPERATIONAL AND FUEL COST SAVINGS" MEANS A MEASURABLE DECREASE IN THE OPERATION AND MAINTENANCE COSTS OF STATE VEHICLES THAT IS ASSOCIATED WITH FUEL OR MAINTENANCE BASED ON HIGHER EFFICIENCY RATINGS OR ALTERNATIVE FUELING METHODS, INCLUDING BUT NOT LIMITED TO SAVINGS FROM THE REDUCTION IN MAINTENANCE REQUIREMENTS AND A REDUCTION IN OR THE ELIMINATION OF PROJECTED FUEL PURCHASE EXPENSES AS A DIRECT RESULT OF INVESTMENT IN HIGHER EFFICIENCY OR ALTERNATIVE FUEL VEHICLES OR VEHICLE OR CHARGING INFRASTRUCTURE.

(11) "VEHICLE FLEET OPERATIONAL AND FUEL COST-SAVINGS CONTRACT" MEANS AN ENERGY PERFORMANCE CONTRACT OR SHARED-SAVINGS CONTRACT OR ANY OTHER AGREEMENT IN WHICH VEHICLE FLEET OPERATIONAL AND FUEL COST SAVINGS ARE USED TO PAY FOR THE COST OF THE VEHICLE OR ASSOCIATED CAPITAL INVESTMENTS.

(12) "VEHICLE FLEET OPERATIONAL AND FUEL COST-SAVINGS MEASURE" MEANS ANY INSTALLATION, MODIFICATION, OR SERVICE THAT IS DESIGNED TO REDUCE ENERGY CONSUMPTION AND RELATED OPERATING COSTS IN VEHICLES AND INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING:

(a) VEHICLE PURCHASE OR LEASE COSTS EITHER IN FULL OR IN PART;
AND

(b) CHARGING OR FUELING INFRASTRUCTURE TO APPROPRIATELY CHARGE OR FUEL ALTERNATIVE FUEL VEHICLES INCLUDED IN AN ENERGY COST-SAVINGS CONTRACT.

SECTION 6. In Colorado Revised Statutes, **amend** 29-12.5-102 as follows:

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 utility cost-savings measures or energy saving measures for an analysis and recommendations pertaining to such measures that would significantly increase:

(a) Utility cost savings and operation and maintenance cost savings in buildings or other facilities owned or rented by the political subdivision;
OR

(b) VEHICLE FLEET OPERATIONAL AND FUEL COST SAVINGS IN THE POLITICAL SUBDIVISION'S FLEET VEHICLES.

(2) Such analysis and recommendations shall include THE FOLLOWING, AS APPLICABLE:

(a) 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 saving measures including, but not limited to, itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs, and debt service;
OR

(b) ESTIMATES OF THE AMOUNTS BY WHICH VEHICLE FLEET OPERATIONAL AND FUEL COST SAVINGS WOULD INCREASE AND ESTIMATES OF ALL COSTS OF SUCH VEHICLE FLEET OPERATIONAL AND FUEL COST-SAVINGS MEASURES.

SECTION 7. In Colorado Revised Statutes, 29-12.5-103, **amend** (1) and (3) as follows:

29-12.5-103. Financing energy 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 ~~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 term of the contract, the board may:

(a) Enter into ~~a utility~~ AN ENERGY 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, WITH ANY PERSON OR ENTITY EXPERIENCED IN THE CALCULATION AND ANALYSIS OF VEHICLE FLEET OPERATIONAL AND FUEL COST SAVINGS, 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 ~~utility cost-savings measures~~ or energy saving measures.

(3) When ~~a utility cost-savings~~ AN ENERGY SAVING 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. In Colorado Revised Statutes, **amend** 29-12.5-104 as follows:

29-12.5-104. Monitoring and reporting of energy and cost savings. The board shall monitor the reductions in energy consumption and cost savings attributable to the ~~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 ~~utility cost-savings measures~~ or energy saving measures that are the subject of the report.

SECTION 9. 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.

John P. Morse
PRESIDENT OF
THE SENATE

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO