



COLORADO

Energy Performance Contracting Program
Colorado Energy Office

COLORADO STATUTES REGARDING ENERGY PERFORMANCE CONTRACTS FOR LOCAL GOVERNMENT

Colorado Statute:

TITLE 29 GOVERNMENT - LOCAL : ENERGY CONSERVATION ARTICLE 12.5. ENERGY CONSERVATION MEASURES C.R.S. 29-12.5-101 (2017)

29-12.5-101. Definitions.

As used in this article 12.5:

(1) "Board" means a governing body of any municipality or home rule county, a board of county commissioners of any county, a special district, or a board of education of any school district.

(2) (Deleted by amendment, L. 2002, p. 1027, § 55, effective June 1, 2002.)

(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, 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 board contracting for energy cost-savings measures;

(c) Requires the party entering into such contract with the board 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 set forth pursuant to paragraph (a) of this subsection (3);

(d) (Deleted by amendment, L. 2001, p. 1093, § 4, effective August 8, 2001.)

(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 subsection (3)(c) of this section exceed the sum of energy cost savings and operation and maintenance cost 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.

(f) Requires such board, upon termination or expiration of the contract, to return to such party any moneys deposited with such board that are not forfeited to such board pursuant to paragraph (e) of this subsection (3);

(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 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.

(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;

(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.

(4.1) "Increase in meter accuracy" means a guaranteed increase in efficiency or accuracy of utility metering or related equipment, systems, or processes or procedures that is calculated or determined by using applicable industry engineering standards.

(4.3) "Meter guarantee" means a stipulated or agreed upon increase in billable revenues to result from the guaranteed increase in meter accuracy, based on stipulated or agreed upon components of a billable revenue calculation in a utility cost-savings measure.

(4.5) "Operation and maintenance cost savings" means a measurable decrease in net 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 net operation and maintenance costs.

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

(6) "Shared-savings contract" means a contract for one or more energy saving measures, which contract:

(a) Provides that all payments to be made by the board contracting for the energy saving 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;

(b) Provides for an initial contract period of no longer than ten years; and

(c) Requires no additional capital investment or contribution of funds from such board or the political subdivision, other than funds available from state or federal energy grants.

(7) "Utility cost savings" means:

(a) A cost savings caused by a reduction in metered or measured physical quantities of a bulk fuel or utility resulting from the implementation of one or more utility cost savings measures when compared with an established baseline of usage; or

(b) A decrease in utility costs as a result of changes in applicable utility rates or utility service suppliers. The savings shall be calculated in comparison with an established baseline of utility costs, excepting other available capital contributions provided by the political subdivision.

(8) "Utility cost-savings contract" means an energy performance contract or a shared-savings contract or any other agreement in which utility cost savings are used to pay for services or equipment.

(9) "Utility cost-savings measure" means an installation, modification, or service that is designed to reduce energy consumption or to increase related operation and maintenance cost savings in buildings and other facilities and includes, but is not limited to, the following:

(a) Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems;

(b) Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(c) Automatic energy control systems;

(d) Heating, ventilating, or air conditioning and distribution system modifications or replacements in buildings or central plants;

(e) Caulking and weatherstripping;

(f) Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a facility unless such increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;

- (g) Energy recovery systems;
- (h) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
- (i) Renewable energy and alternate energy systems;
- (j) Devices that reduce water consumption or sewer charges;
- (k) Changes in operation and maintenance practices;
- (l) Procurement of low-cost energy supplies of all types, including electricity, natural gas, and other fuel sources, and water;
- (m) Indoor air quality improvements that conform to applicable building code requirements;
- (n) Daylighting systems;
- (o) Building operation programs that reduce utility and operating costs including, but not limited to, computerized energy management and consumption tracking programs, staff and occupant training, and other similar activities;
- (p) Services to reduce utility costs or to increase operation and maintenance cost savings by identifying utility errors, optimizing rate schedules, or increasing meter accuracy; or
- (q) Any other modification, installation, or remodeling approved as a utility cost-savings measure by the board.

(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.

Source: L. 91: Entire article added, p. 728, § 1, effective May 1. L. 92: (3)(d) amended, p. 548, § 22, effective May 28. L. 2001: (1), IP(2), (2)(a), (2)(d), (2)(i), IP(3), (3)(a),

(3)(b), (3)(c), (3)(d), (3)(e), (3)(h), and (4) amended and (2)(j), (2)(k), (2)(l), (2)(m), (2)(n), (2)(o), (2)(p), (2)(q), (4.5), (7), and (8) added, pp. 1093, 1096, § § 4, 5, effective August 8. L. 2002: (2) amended and (9) added, p. 1027, § 55, effective June 1. L. 2004: (3)(f) amended, p. 1203, § 71, effective August 4. L. 2013: (2.5), (10), (11), and (12) added and IP(3), (3)(a), (3)(b), (3)(c), (3)(e), (3)(h), (4), (4.5), and (5) amended, ([SB 13-254](#)), [ch. 403, p. 2363, § 5](#), effective June 5. L. 2017: IP, (3)(e), (4.5), IP(9), and (9)(p) amended and (4.1) and (4.3) added, ([SB 17-252](#)), [ch. 316, p. 1695, § 1](#), effective August 9.

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.

Source: L. 91: Entire article added, p. 731, § 1, effective May 1. L. 2001: Entire section amended, p. 1096, § 6, effective August 8. L. 2013: Entire section amended, ([SB 13-254](#)), [ch. 403, p. 2365, § 6](#), effective June 5.

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 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 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 energy saving measures.

(2) (a) Except as provided in paragraph (b) of this subsection (2):

(I) No contract entered into or indebtedness incurred pursuant to this section shall constitute or give rise to an indebtedness within the meaning of any constitutional, statutory, or home rule debt limitation; and

(II) Any contract may be entered into and indebtedness incurred without approval of the qualified electors of the political subdivision.

(b) Paragraph (a) of this subsection (2) shall not apply to any indebtedness incurred by contract or otherwise under this section which exceeds or which causes the total outstanding indebtedness so incurred to exceed the following percentage of the latest valuation for assessment of the taxable property in the political subdivision:

(I) One percent for a school district;

(II) One-tenth of one percent for a county, except a home rule county;

(III) One-fifth of one percent for a home rule county; or

(IV) One-fifth of one percent for a municipality.

(3) When 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.

Source: L. 91: Entire article added, p. 731, § 1, effective May 1. L. 2001: (1) and (3) amended, p. 1096, § 7, effective August 8. L. 2013: (1) and (3) amended, [\(SB 13-254\), ch. 403, p. 2365, § 7](#), effective June 5.

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 energy saving measures financed pursuant to [section 29-12.5-103](#) and shall annually prepare a report documenting such reductions, savings, or meter guarantee for the first three 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 energy saving measures that are the subject of the report.

Source: L. 91: Entire article added, p. 732, § 1, effective May 1. L. 2001: Entire section amended, p. 1097, § 8, effective August 8. L. 2013: Entire section amended, [\(SB 13-254\), ch. 403, p. 2366, § 8](#), effective June 5. L. 2017: Entire section amended, [\(SB 17-252\), ch. 316, p. 1696, § 2](#), effective August 9.