

BILL TOPIC: "Building Energy Performance"

A BILL FOR AN ACT

CONCERNING MEASURES TO IMPROVE THE ENERGY EFFICIENCY OF LARGE PROPERTIES, AND, IN CONNECTION THEREWITH, REQUIRING OWNERS OF LARGE PROPERTIES TO COLLECT AND REPORT ON ENERGY-USE BENCHMARKING DATA AND COMPLY WITH PERFORMANCE STANDARDS RELATED TO ENERGY AND GREENHOUSE GAS EMISSIONS AND MODIFYING STATUTORY REQUIREMENTS REGARDING ENERGY PERFORMANCE CONTRACTS.

Bill Summary

Section 4 of the bill requires owners of certain large properties (covered properties), on a periodic basis, to collect and report to the Colorado energy office on a covered property's energy use. The bill establishes a process requiring certain electric and gas utilities to provide energy-use data to a covered property owner when requested by the covered property owner. Section 4 also requires the air quality control commission (commission) in the department of public health and environment to establish, by rule, building energy and greenhouse gas emission performance standards (performance standards) that each owner of a covered property would need to achieve by 2029. An owner is required to report to the Colorado energy office on a covered property's performance in calendar year 2030 and periodically thereafter. The commission is required to update the performance standards, by rule, at least every 5 years.

Section 2 requires the Colorado energy office to assist in implementing the energy-use and performance standard reporting requirements set forth in section 4 by creating a database of covered properties and owners required to comply with section 4; developing a method for

administering the energy-use and performance standard reports; developing publicly available, digitally interactive maps and lists showing the energy-use and performance standard data reported; providing, within existing resources, assistance to owners, utilities, and local governments; and coordinating with local governments implementing their own benchmarking or building energy performance requirements or considering such implementation.

Section 3 establishes that violations of the energy-use and performance standard reporting requirements occurring on or after June 1, 2024, result in civil penalties in an amount of not more than \$3,000 for a violation of the energy-use reporting requirement and not more than \$5,000 for a violation of the performance standard reporting requirement plus, for each square foot of gross floor area of the covered property, an amount up to three cents for each day that the violation continues. Civil penalty payments collected are credited to the climate change mitigation and adaptation fund created in **section 1**.

Section 5 modifies the definition of an "energy performance contract" that a governing body of a municipality, county, special district, or school district (board) enters into for evaluation, recommendations, or implementation of energy-saving measures to remove requirements that a board's payment for goods and services pursuant to the contract be made within a certain number of years of the contract's execution.

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

SECTION 1. In Colorado Revised Statutes, **add** 24-38.5-102.6 as follows:

24-38.5-102.6. Climate change mitigation and adaptation fund - creation - use.

THE CLIMATE CHANGE MITIGATION AND ADAPTATION FUND IS HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF CIVIL PENALTY PAYMENTS CREDITED TO THE FUND PURSUANT TO SECTION 25-7-122 (1)(f); GIFTS, GRANTS, AND DONATIONS MADE TO THE COLORADO ENERGY OFFICE TO HELP FINANCE ITS ADMINISTRATION OF CLIMATE CHANGE

MITIGATION OR ADAPTATION PROGRAMS AND POLICIES; ANY OTHER MONEY CREDITED TO THE FUND; AND ANY MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR TRANSFER TO THE FUND. MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE COLORADO ENERGY OFFICE FOR THE PURPOSE OF FINANCING AND ADMINISTERING PROGRAMS AND POLICIES DEVELOPED TO MITIGATE OR ADAPT TO CLIMATE CHANGE THROUGHOUT THE STATE. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO THE FUND.

SECTION 2. In Colorado Revised Statutes, **add** 24-38.5-110 as follows:

24-38.5-110. Building performance program - duties of the office - county assessor records database - reporting - definitions.

(1) THE COLORADO ENERGY OFFICE SHALL ASSIST THE DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, REFERRED TO IN THIS SECTION AS THE "DIVISION", CREATED IN SECTION 25-1-102, IN IMPLEMENTING THE BUILDING PERFORMANCE PROGRAM AS FOLLOWS:

- (a) BASED ON COUNTY ASSESSOR RECORDS AND OTHER AVAILABLE SOURCES OF INFORMATION, THE OFFICE SHALL CREATE A DATABASE OF COVERED PROPERTIES AND OF OWNERS REQUIRED TO COMPLY WITH THE BUILDING PERFORMANCE PROGRAM. 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.
- (b) THE OFFICE SHALL DEVELOP A METHOD FOR ADMINISTERING BUILDING PERFORMANCE PROGRAM REPORTS SUBMITTED BY OWNERS PURSUANT TO SECTION 25-7-141 AND SHARING THE REPORTS WITH THE DIVISION.
- (c) AFTER EACH BUILDING PERFORMANCE PROGRAM REPORTING DEADLINE, AS SET FORTH IN SECTION 25-7-141, THE OFFICE SHALL DEVELOP PUBLICLY AVAILABLE, DIGITALLY

INTERACTIVE MAPS AND LISTS THAT ILLUSTRATE BUILDING PERFORMANCE PROGRAM DATA FOR ALL COVERED PROPERTIES. THE LISTS MUST NOT INCLUDE ANY CONTACT INFORMATION FOR A COVERED PROPERTY THAT IS NOT OTHERWISE MADE PUBLICLY AVAILABLE.

- (d) THE OFFICE SHALL PROVIDE TO THE DIVISION BUILDING PERFORMANCE PROGRAM DATA REPORTED BY OWNERS;
- (e) WITHIN THE OFFICE'S EXISTING RESOURCES, THE OFFICE MAY PROVIDE GUIDANCE AND ASSISTANCE TO OWNERS, UTILITIES, AND LOCAL GOVERNMENTS TO FACILITATE THE IMPLEMENTATION OF THIS SECTION AND OF SECTION 25-7-141; AND
- (f) THE OFFICE SHALL COORDINATE WITH A LOCAL GOVERNMENT THAT IS CURRENTLY IMPLEMENTING OR CONSIDERING IMPLEMENTATION OF AN ENERGY BENCHMARKING OR ENERGY PERFORMANCE POLICY OR PROGRAM, INCLUDING COORDINATING REPORTING REQUIREMENTS.

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

- (a) "BUILDING PERFORMANCE PROGRAM" MEANS THE BENCHMARKING AND PERFORMANCE STANDARD REQUIREMENTS SET FORTH IN SECTION 25-7-141.
- (b) "COVERED PROPERTY" HAS THE MEANING SET FORTH IN SECTION 25-7-141 (2)(f).
- (c) "OFFICE" MEANS THE COLORADO ENERGY OFFICE CREATED IN SECTION 24-38.5-101.
- (d) "OWNER" HAS THE MEANING SET FORTH IN SECTION 25-7-141 (2)(1).

SECTION 3. In Colorado Revised Statutes, 25-7-122, **amend** (1) introductory portion; and **add** (1)(f) as follows:

25-7-122. Civil penalties - definitions.

- (1) Upon application of the division, penalties as determined under ~~this article~~ ARTICLE 7

may be collected by the division by action instituted in the district court for the district in which is located the air pollution source affected in accordance with the following provisions:

(f) (I) (A) AFTER JUNE 1, 2024, AND EXCEPT AS PROVIDED IN SUBSECTION (1)(f)(I)(C) OF THIS SECTION, AN OWNER WHO VIOLATES SECTION 25-7-141 IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN THREE THOUSAND DOLLARS; EXCEPT THAT AN OWNER WHO VIOLATES THE PERFORMANCE STANDARD REQUIREMENTS SET FORTH IN SECTION 25-7-141 (8) IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS PLUS, FOR EACH SQUARE FOOT OF GROSS FLOOR AREA OF THE COVERED PROPERTY, AN AMOUNT UP TO THREE CENTS FOR EACH DAY THAT THE VIOLATION CONTINUES.

(B) IF AN OWNER COMMITS A VIOLATION WITH REGARD TO MULTIPLE PROPERTIES SUBJECT TO SECTION 25-7-141, THE OWNER IS SUBJECT TO A SEPARATE CIVIL PENALTY FOR EACH PROPERTY FOR WHICH THE OWNER HAS COMMITTED A VIOLATION.

(C) EXCEPT AS MODIFIED BY THE COMMISSION, BY RULE, PURSUANT TO SECTION 25-7-141 (7)(c)(II), THE DIVISION SHALL NOT ASSESS CIVIL PENALTIES WITH REGARD TO ANY PROPERTIES OWNED BY THE FEDERAL OR STATE GOVERNMENT; A STATUTORY OR HOME RULE CITY, CITY AND COUNTY, OR COUNTY; A SCHOOL DISTRICT AS DEFINED IN SECTION 22-11-103 (29); A STATE INSTITUTION OF HIGHER EDUCATION AS DEFINED IN SECTION 23-1-108 (7)(g)(II); OR A SPECIAL DISTRICT AS DEFINED IN SECTION 32-1-103 (20).

(D) THE DIVISION SHALL TRANSMIT CIVIL PENALTIES COLLECTED PURSUANT TO THIS SUBSECTION (1)(f) 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) AS USED IN THIS SUBSECTION (1)(f):

(A) "COVERED PROPERTY" HAS THE MEANING SET FORTH IN SECTION 25-7-141 (2)(f);

(B) "GROSS FLOOR AREA" HAS THE MEANING SET FORTH IN SECTION 25-7-141 (2)(k); AND

(C) "OWNER" HAS THE MEANING SET FORTH IN SECTION 25-7-141 (2)(l).

SECTION 4. In Colorado Revised Statutes, **add** 25-7-141 as follows:

25-7-141. Energy benchmarking - data collection and access - utility requirements - performance standards - civil penalties - rules - reports - definitions.

(1) **Legislative declaration.** THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT THE REGULATION OF BUILDING PERFORMANCE IS OF STATEWIDE INTEREST BECAUSE:

(a) AS OF 2020, BUILDINGS REPRESENTED THE THIRD-LARGEST SOURCE OF GREENHOUSE GAS EMISSIONS 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) LARGE PROPERTIES REPRESENT A DISPROPORTIONATE AMOUNT OF THE ENERGY USE AND GREENHOUSE GAS EMISSIONS IN THE STATE, YET BUILDING TENANTS THAT BEAR THE COST OF UTILITIES RARELY HAVE THE ABILITY TO IMPLEMENT BUILDING-WIDE PERFORMANCE UPGRADES;

(d) THE STATE OF COLORADO PROVIDES MANY LOW- AND NO-COST OPTIONS FOR COLORADO PROPERTY OWNERS TO FINANCE BUILDING PERFORMANCE IMPROVEMENTS, INCLUDING ENERGY PERFORMANCE CONTRACTING FOR PUBLIC ENTITIES AS DEFINED IN SECTION 29-12.5-101 (3) AND, FOR COMMERCIAL ENTITIES, PROPERTY-ASSESSED CLEAN ENERGY FINANCING PROVIDED BY THE COLORADO NEW ENERGY IMPROVEMENT DISTRICT CREATED IN SECTION 32-20-104. MANY PUBLIC UTILITIES IN THE STATE ALSO PROVIDE TECHNICAL

ASSISTANCE AND FINANCIAL INCENTIVES TO HELP BUILDING OWNERS IMPLEMENT PERFORMANCE IMPROVEMENTS.

- (e) IT IS IN THE INTEREST OF THE STATE TO ESTABLISH A PROGRAM TO HELP COLORADO CITIZENS UNDERSTAND AND TRACK ENERGY USE AND GREENHOUSE GAS EMISSIONS FROM LARGE PROPERTIES AND TO ENACT 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 DATA:

- (i) THAT A QUALIFYING UTILITY GATHERS IN AT LEAST CALENDAR MONTHLY INTERVALS AND AGGREGATES FOR AN ENTIRE PROPERTY;
- (ii) FROM WHICH ALL UNIQUE IDENTIFIERS AND PERSONAL INFORMATION HAVE BEEN REMOVED; AND
- (iii) THAT CONFORMS TO THE QUALIFYING UTILITY'S AGGREGATION THRESHOLD.

(b) "AGGREGATION THRESHOLD" MEANS THE MINIMUM NUMBER OF TENANTS IN A COVERED PROPERTY FOR WHICH A QUALIFYING UTILITY MAY PROVIDE THE OWNER OF THE COVERED PROPERTY WITH AGGREGATED DATA UPON REQUEST WITHOUT REQUIRING THE OWNER TO PROVIDE THE QUALIFYING UTILITY EVIDENCE OF EACH TENANT'S CONSENT TO HAVE THE TENANT'S DATA SHARED.

(c) "BENCHMARK" MEANS TO INPUT AND CALCULATE, THROUGH THE USE OF A BENCHMARKING TOOL, THE TOTAL ENERGY CONSUMED FOR A COVERED PROPERTY FOR THE PREVIOUS CALENDAR YEAR AND OTHER DESCRIPTIVE INFORMATION FOR THE COVERED PROPERTY.

(d) "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.

- (e) "COLORADO ENERGY OFFICE" OR "OFFICE" MEANS THE COLORADO ENERGY OFFICE CREATED IN SECTION 24-38.5-101 OR A SUCCESSOR AGENCY.
- (f) (i) "COVERED PROPERTY" MEANS A SINGLE BUILDING, WHICH BUILDING MAY CONTAIN A SINGLE OCCUPANT OR GROUP OF TENANTS, THAT IS:
 - (A) A STATE-OWNED PROPERTY COMPRISING A GROSS FLOOR AREA OF FIVE THOUSAND SQUARE FEET OR MORE; OR
 - (B) A NONSTATE-OWNED PROPERTY COMPRISING A GROSS FLOOR AREA OF FIFTY THOUSAND SQUARE FEET OR MORE. AS USED IN THIS SUBSECTION (2)(F)(I)(B), "NONSTATE-OWNED PROPERTY" INCLUDES PROPERTY OWNED BY A STATE INSTITUTION OF HIGHER EDUCATION OR BY A STATUTORY OR HOME RULE CITY, CITY AND COUNTY, OR COUNTY.
- (ii) "COVERED PROPERTY" DOES NOT INCLUDE:
 - (A) A STORAGE FACILITY OR STAND-ALONE PARKING GARAGE THAT LACKS HEATING OR COOLING; OR
 - (B) A PROPERTY IN WHICH MORE THAN HALF OF THE GROSS FLOOR AREA IS USED FOR MANUFACTURING, INDUSTRIAL, OR AGRICULTURAL PURPOSES.
- (g) "ENERGY STAR" MEANS THE FEDERAL PROGRAM AUTHORIZED 1 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.
- (h) "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, OR A SCORE FROM A RATING SYSTEM OF A SUCCESSOR BENCHMARKING TOOL.

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

(j) "GREENHOUSE GAS" HAS THE MEANING SET FORTH IN SECTION 2-2-322.3 (1)(a).

(k) "GROSS FLOOR AREA" MEANS THE TOTAL PROPERTY AREA, AS MEASURED FROM THE OUTSIDE SURFACE OF EACH EXTERIOR WALL OF THE BUILDING.

(l) "OWNER" MEANS:

(i) A PERSON POSSESSING TITLE TO A PROPERTY; AND

(ii) AN AGENT AUTHORIZED TO ACT ON BEHALF OF A PERSON POSSESSING TITLE TO A PROPERTY.

(m) "QUALIFYING UTILITY" MEANS:

(i) AN INVESTOR-OWNED ELECTRIC OR GAS UTILITY, COOPERATIVE ELECTRIC ASSOCIATION, OR MUNICIPALLY OWNED ELECTRIC OR GAS UTILITY WITH FIVE THOUSAND OR MORE ACTIVE COMMERCIAL AND INDUSTRIAL SERVICE CONNECTIONS, ACCOUNTS, OR CUSTOMERS IN THE STATE; AND

(ii) A NATURAL GAS SUPPLIER WITH FIVE OR MORE ACTIVE COMMERCIAL OR INDUSTRIAL CONNECTIONS, ACCOUNTS, OR CUSTOMERS IN THE STATE.

(n) "STATE INSTITUTION OF HIGHER EDUCATION" HAS THE MEANING SET FORTH IN SECTION 23-1-108 (7)(G)(II).

(o) "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.

(3) Benchmarking requirements on owners.

(a) ON AN ANNUAL BASIS, THE OWNER OF A COVERED PROPERTY SHALL BENCHMARK THE COVERED PROPERTY USING THE BENCHMARKING TOOL AND, ON OR BEFORE JUNE 1, 2023,

AND ON OR BEFORE JUNE 1 OF EACH YEAR THEREAFTER, SHALL SUBMIT AN ACCURATE REPORT OF THE BENCHMARKING DATA FOR THE COVERED PROPERTY FOR THE PREVIOUS CALENDAR YEAR TO THE OFFICE. THE DATA BENCHMARKED MUST INCLUDE AT A MINIMUM:

- (i) DATA GENERATED BY THE BENCHMARKING TOOL, INCLUDING:
 - (A) THE ENERGY STAR SCORE, IF AVAILABLE;
 - (B) SITE AND SOURCE ENERGY-USE INTENSITY;
 - (C) WEATHER-NORMALIZED SITE AND SOURCE ENERGY-USE INTENSITY; AND
 - (D) TOTAL ANNUAL SITE AND SOURCE GREENHOUSE GAS EMISSIONS; AND
- (ii) A PHYSICAL DESCRIPTION OF THE COVERED PROPERTY AND DESCRIPTIONS OF ITS OPERATIONAL CHARACTERISTICS, INCLUDING:
 - (A) THE NAME OF THE COVERED PROPERTY, IF ANY;
 - (B) THE COVERED PROPERTY'S ADDRESS;
 - (C) THE PRIMARY USE OF THE COVERED PROPERTY;
 - (D) THE COVERED PROPERTY'S GROSS FLOOR AREA; AND
 - (E) THE YEARS IN WHICH THE COVERED PROPERTY HAS BEEN CERTIFIED BY ENERGY STAR AND THE MOST RECENT DATE OF CERTIFICATION, IF APPLICABLE.
- (b) AN OWNER OF MULTIPLE COVERED PROPERTIES THAT ARE NOT SEPARATELY METERED OR SUBMETERED FROM ONE ANOTHER MAY REPORT THE COVERED PROPERTIES AS A CAMPUS IN THE BENCHMARKING TOOL.
- (c) THE COMMISSION MAY MODIFY, BY RULE, THE OPERATIONAL CHARACTERISTICS THAT AN OWNER IS REQUIRED TO BENCHMARK.

(4) Utility data requirements - aggregation threshold.

(a) BEGINNING JANUARY 1, 2022, A QUALIFYING UTILITY SHALL:

(i) POST ON ITS PUBLIC WEBSITE INFORMATION ABOUT THE AGGREGATION THRESHOLD THAT THE QUALIFYING UTILITY APPLIES. A QUALIFYING UTILITY'S AGGREGATION THRESHOLD MUST BE:

(A) A SET NUMBER OF TENANTS THAT IS EQUAL TO OR LESS THAN THE MINIMUM NUMBER OF TENANTS SET FORTH IN THE PUBLIC UTILITIES COMMISSION'S RULES REGARDING A PROPERTY OWNER'S REQUESTS FOR WHOLE-BUILDING ENERGY-USE DATA; OR

(B) IF THE PUBLIC UTILITIES COMMISSION REPEALS ITS RULES REGARDING A PROPERTY OWNER'S REQUESTS FOR WHOLE-BUILDING ENERGY-USE DATA OR AMENDS THE RULES IN A MANNER THAT NO LONGER SETS FORTH A MINIMUM NUMBER OF TENANTS, FOUR TENANTS.

(ii) PROVIDE AN OWNER OF A COVERED PROPERTY WITH AGGREGATED DATA UPON:

(A) THE OWNER'S WRITTEN OR ELECTRONIC REQUEST; AND

(B) IF THE COVERED PROPERTY DOES NOT MEET THE QUALIFYING UTILITY'S AGGREGATION THRESHOLD PURSUANT TO SUBSECTION (4)(A)(I) OF THIS SECTION, THE OWNER'S SUBMISSION OF WRITTEN OR DIGITAL CONSENT FROM EACH TENANT OF THE COVERED PROPERTY PURSUANT TO SUBSECTION (4)(C)(I) OF THIS SECTION; AND

(iii) PROVIDE THE AGGREGATED DATA WITHIN THIRTY DAYS AFTER A VALID REQUEST IS MADE AND ON AN ANNUAL BASIS THEREAFTER UNTIL THE OWNER REVOKES THE REQUEST.

(b) DATA THAT A QUALIFYING UTILITY PROVIDES PURSUANT TO THIS SUBSECTION (4) MUST BE:

- (i) DIRECTLY UPLOADED TO THE OWNER'S BENCHMARKING TOOL ACCOUNT;
- (ii) DELIVERED IN THE SPREADSHEET TEMPLATE SPECIFIED BY THE BENCHMARKING TOOL;
OR
- (iii) DELIVERED IN ANOTHER FORMAT APPROVED BY THE OFFICE.

(c) (i) IF A COVERED PROPERTY DOES NOT MEET THE QUALIFYING UTILITY'S AGGREGATION THRESHOLD PURSUANT TO SUBSECTION (4)(A)(I) OF THIS SECTION, THE OWNER MUST OBTAIN WRITTEN OR DIGITAL CONSENT FROM EACH TENANT AND FURNISH THE WRITTEN OR DIGITAL CONSENT TO THE QUALIFYING UTILITY ALONG WITH THE OWNER'S REQUEST FOR AGGREGATED DATA PURSUANT TO SUBSECTION (4)(A) OF THIS SECTION. AN OWNER OF A COVERED PROPERTY THAT MEETS A QUALIFYING UTILITY'S AGGREGATION THRESHOLD NEED NOT OBTAIN CONSENT FROM THE TENANTS.

(ii) A TENANT'S WRITTEN OR DIGITAL CONSENT:

(A) MAY BE PROVIDED IN A LEASE AGREEMENT PROVISION; AND

(B) IS VALID UNTIL REVOKED BY THE TENANT.

(iii) IF A TENANT OF A COVERED PROPERTY THAT DOES NOT MEET A QUALIFYING UTILITY'S AGGREGATION THRESHOLD VACATES THE COVERED PROPERTY AND HAS NOT DENIED CONSENT TO THE OWNER TO ACCESS AND SHARE THE TENANT'S ENERGY-USE DATA, THE OWNER IS ENTITLED TO RECEIVE THE TENANT'S MONTHLY ENERGY-USE DATA FROM THE QUALIFYING UTILITY.

(d) THE OWNER OF A COVERED PROPERTY MAY RECEIVE AGGREGATED DATA PERTAINING TO THE OWNER'S COVERED PROPERTY IN ACCORDANCE WITH THIS SECTION REGARDLESS OF WHETHER THE OWNER IS NAMED ON THE UTILITY ACCOUNT FOR THE COVERED PROPERTY.

(5) Waivers and extensions of time.

(a) AN OWNER OF A COVERED PROPERTY 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 DIVISION, WHICH DOCUMENTATION MUST ESTABLISH THAT THE COVERED PROPERTY HAS MET ONE OR MORE OF THE FOLLOWING CONDITIONS FOR THE CALENDAR YEAR TO BE BENCHMARKED:

- (i) THE COVERED PROPERTY DID NOT HAVE A CERTIFICATE OF OCCUPANCY OR A TEMPORARY CERTIFICATE OF OCCUPANCY FOR THE FULL YEAR;
- (ii) THE COVERED PROPERTY WAS UNOCCUPIED FOR AT LEAST THIRTY CONSECUTIVE DAYS OF THE YEAR;
- (iii) OVER THE COURSE OF THE YEAR, THE COVERED PROPERTY HAD AN AVERAGE PHYSICAL OCCUPANCY RATE OF LESS THAN FIFTY PERCENT;
- (iv) THE COVERED PROPERTY DID NOT RECEIVE SERVICE FROM AN ELECTRIC OR NATURAL GAS UTILITY FOR AT LEAST THIRTY CONSECUTIVE DAYS OF THE YEAR;
- (v) A DEMOLITION PERMIT WAS ISSUED FOR THE ENTIRE COVERED PROPERTY;
- (vi) THE COVERED PROPERTY MET ONE OR MORE OF THE FOLLOWING CONDITIONS FOR FINANCIAL HARDSHIP:
 - (A) WITHIN THE PREVIOUS TWO YEARS, THE PROPERTY HAS BEEN INCLUDED ON A CITY'S, COUNTY'S, OR CITY AND COUNTY'S ANNUAL TAX LIEN SALE LIST;
 - (B) THE PROPERTY IS AN ASSET SUBJECT TO A COURT-APPOINTED RECEIVER THAT CONTROLS THE ASSET DUE TO FINANCIAL STRESS;
 - (C) THE PROPERTY IS OWNED BY A FINANCIAL INSTITUTION AS A RESULT OF DEFAULT BY A BORROWER;
 - (D) THE PROPERTY HAS BEEN ACQUIRED BY A DEED IN LIEU OF FORECLOSURE; OR
 - (E) THE PROPERTY IS THE SUBJECT OF A SENIOR MORTGAGE SUBJECT TO A NOTICE OF DEFAULT; OR

(vii) THE COVERED PROPERTY DOES NOT MEET A QUALIFYING UTILITY'S AGGREGATION THRESHOLD, ONE OR MORE OF THE TENANTS REFUSED TO PROVIDE THE OWNER WITH PERMISSION TO ACCESS THE TENANT'S RELEVANT ENERGY-USE DATA, THE OWNER PROVIDES PROOF THAT IT REQUESTED PERMISSION FROM THE TENANT OR TENANTS 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.

(b) AN OWNER OF A COVERED PROPERTY MAY REQUEST A TIME EXTENSION FROM THE DIVISION TO SUBMIT A BENCHMARKING REPORT IF THE OWNER SUBMITS DOCUMENTATION 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 TENANT TO PROVIDE THE NECESSARY INFORMATION.

(c) THE APPROVAL OF A WAIVER OR TIME EXTENSION REQUEST MADE PURSUANT TO THIS SUBSECTION (5) IS WITHIN THE DIVISION'S SOLE DISCRETION.

(d) THE DIVISION SHALL NOTIFY THE OFFICE OF ALL APPROVED WAIVERS AND EXTENSIONS OF TIME.

(6) Requirements upon sale or lease of covered property.

(a) AT THE TIME OF LISTING A COVERED PROPERTY FOR SALE OR LEASE, THE OWNER OF THE COVERED PROPERTY SHALL FURNISH A COPY OF REPORTED BENCHMARKING DATA FROM THE PREVIOUS CALENDAR YEAR OR FROM THE MOST RECENT TWELVE-MONTH PERIOD OF CONTINUOUS OCCUPATION TO PROSPECTIVE BUYERS, LESSEES, BROKERS AS DEFINED IN SECTION 12-10-201 (6), AND MAJOR COMMERCIAL REAL ESTATE LISTING SERVICES.

(b) IF A COVERED PROPERTY CHANGES OWNERSHIP, THE FORMER OWNER SHALL MAKE AVAILABLE TO THE NEW OWNER THE ENERGY-USE DATA, PROPERTY DATA, AND TENANT CONSENT DOCUMENTATION NECESSARY TO BENCHMARK THE COVERED PROPERTY. IF

POSSIBLE, THE FORMER OWNER SHALL TRANSFER OR REASSIGN THE ACCOUNT REPRESENTING THE COVERED PROPERTY WITHIN THE BENCHMARKING TOOL TO THE NEW OWNER. THE NEW OWNER MAY REQUEST AND RECEIVE FROM A QUALIFYING UTILITY THE AGGREGATED DATA NECESSARY TO BENCHMARK THE COVERED PROPERTY FOR A FULL CALENDAR YEAR.

(7) Benchmarking rules.

(a) THE COMMISSION MAY PROMULGATE RULES TO IMPLEMENT OR, IN ACCORDANCE WITH SUBSECTION (7)(b) OF THIS SECTION, MODIFY THE BENCHMARKING PROGRAM SET FORTH IN THIS SECTION.

(b) THE RULES MAY MODIFY:

(i) THE PROVISIONS REGARDING EXTENSIONS OF TIME AND WAIVERS SET FORTH IN SUBSECTION (5) OF THIS SECTION;

(ii) THE BENCHMARKING DATA THAT MUST BE REPORTED PURSUANT TO SUBSECTION (3) OF THIS SECTION IF THE DATA CAN BE RECORDED BY THE BENCHMARKING TOOL; AND

(iii) THE BENCHMARKING TOOL THAT OWNERS ARE REQUIRED TO USE TO BENCHMARK.

(c) AFTER JUNE 1, 2024, THE COMMISSION MAY BY RULE:

(i) REDUCE THE COVERED PROPERTY SIZE THRESHOLD FOR REQUIRED BENCHMARKING; OR

(ii) INCREASE THE MAXIMUM CIVIL PENALTIES LISTED IN SECTION 25-7-122 (1)(f).

(8) Performance standard requirements - rules.

(a) TO HELP ACHIEVE THE EMISSION-REDUCTION TARGETS SET FORTH IN SECTION 25-7-102 (2)(g), THE COMMISSION SHALL DEVELOP PERFORMANCE STANDARDS TO MAXIMIZE REDUCTIONS OF ENERGY USE AND GREENHOUSE GAS EMISSIONS FROM THE BUILDING

SECTOR.

- (b) ON OR BEFORE APRIL 1, 2024, THE COMMISSION SHALL ESTABLISH, BY RULE, BUILDING ENERGY AND GREENHOUSE GAS EMISSION PERFORMANCE STANDARDS TO BE ACHIEVED BY OWNERS OF COVERED PROPERTIES BY CALENDAR YEAR 2029 AND TO BE REPORTED TO THE OFFICE AS PART OF BENCHMARKING REPORTING REQUIREMENTS FOR CALENDAR YEAR 2030. THE COMMISSION SHALL DESIGN THE INITIAL PERFORMANCE STANDARDS TO REDUCE TOTAL ANNUAL GREENHOUSE GAS EMISSIONS, AS AGGREGATED ACROSS ALL COVERED PROPERTIES THROUGHOUT THE STATE, BY AT LEAST TWENTY PERCENT BY 2030, AS COMPARED TO 2022 LEVELS. THE REDUCTIONS MUST NOT INCLUDE SAVINGS FROM SYSTEM-WIDE DECARBONIZATION OF THE ELECTRICITY OR NATURAL GAS UTILITY GENERATION PORTFOLIO, BUT MAY INCLUDE SAVINGS FROM UTILITY OR LOCAL ENERGY EFFICIENCY PROGRAMS. THE COMMISSION SHALL UPDATE THE STANDARDS AT LEAST EVERY FIVE YEARS AFTER 2024 IN ORDER TO ESTABLISH STANDARDS THROUGH 2050 THAT ARE CONSISTENT WITH THE EMISSION-REDUCTION TARGETS SET FORTH IN SECTION 25-7-102 (2)(g).
- (c) THE COMMISSION'S PERFORMANCE STANDARDS MUST BE SET BY BUILDING TYPE AND MUST INCLUDE METRICS SUCH AS ENERGY STAR SCORE TARGETS, ENERGY STAR SCORE IMPROVEMENTS, ENERGY-USE INTENSITY TARGETS, ENERGY-USE INTENSITY IMPROVEMENTS, AND INDUSTRY-DEVELOPED ENERGY EFFICIENCY STANDARDS. THE COMMISSION SHALL NOT SET TARGETS THAT UNDULY BURDEN ALREADY HIGH-PERFORMANCE BUILDINGS, TENANT-OWNED MULTIFAMILY RESIDENTIAL BUILDINGS, LOCAL GOVERNMENT-OWNED BUILDINGS, OR BUILDINGS SERVING PRIMARILY LOW-INCOME RESIDENTS. IN SETTING TARGETS, THE COMMISSION SHALL CONSIDER EXPECTED CHANGES IN HEATING AND COOLING REQUIREMENTS RESULTING FROM CLIMATE CHANGE.
- (d) IN ESTABLISHING PERFORMANCE STANDARDS BY RULE PURSUANT TO THIS SUBSECTION (8), THE COMMISSION SHALL NOT PRECLUDE A NEW STRUCTURE FROM ACCESSING A NATURAL GAS LINE OR REQUIRE THE REMOVAL OF A NATURAL GAS LINE FROM AN EXISTING STRUCTURE.

(e) THE COMMISSION MAY, BY RULE, ESTABLISH WAIVER AND TIME EXTENSION CRITERIA AND PROCEDURES FOR PERFORMANCE STANDARD REQUIREMENTS SIMILAR TO THE WAIVER AND TIME EXTENSION CRITERIA AND PROCEDURES ESTABLISHED PURSUANT TO SUBSECTION (5) OF THIS SECTION.

(f) AFTER JUNE 1, 2029, THE COMMISSION MAY, BY RULE:

(i) REDUCE THE SIZE THRESHOLD OF A COVERED PROPERTY FOR PURPOSES OF MEETING THE PERFORMANCE STANDARDS REQUIRED IN THIS SUBSECTION (8); AND

(ii) REMOVE SPECIFIC TYPES OF ENTITIES FROM THE LIST OF ENTITIES THAT ARE EXEMPTED FROM CIVIL PENALTIES PURSUANT TO SECTION 25-7-122 (1)(f)(i)(C).

(g) THE DIVISION MAY ALLOW AN ENERGY EFFICIENCY IMPROVEMENT THAT WAS MADE TO A COVERED PROPERTY BEFORE THE EFFECTIVE DATE OF THE COMMISSION'S RULES ESTABLISHING THE INITIAL PERFORMANCE STANDARDS TO COUNT TOWARD THE COVERED PROPERTY'S COMPLIANCE WITH THE INITIAL PERFORMANCE STANDARDS IF THE DIVISION CAN VERIFY THE IMPROVEMENT.

(9) **Saving clause.** THIS SECTION DOES NOT:

(a) RESTRICT THE ABILITY OF A QUALIFYING UTILITY TO PROVIDE INCENTIVES OR OTHER ENERGY EFFICIENCY PROGRAM SERVICES FOR COVERED PROPERTIES;

(b) RESTRICT 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 PROPERTIES;

(c) RESTRICT THE ABILITY OF A QUALIFYING UTILITY TO SET AN AGGREGATION THRESHOLD THAT IS LESS THAN THE MINIMUM NUMBER OF TENANTS IDENTIFIED IN THE PUBLIC UTILITIES COMMISSION'S RULE REGARDING A PROPERTY OWNER'S REQUESTS FOR WHOLE-BUILDING ENERGY-USE DATA; OR

(d) RESTRICT A LOCAL GOVERNMENT FROM ADOPTING OR IMPLEMENTING AN ORDINANCE OR RESOLUTION THAT IMPOSES MORE STRINGENT BENCHMARKING REQUIREMENTS OR PERFORMANCE STANDARD REQUIREMENTS.

(10) EACH OWNER OF A BUILDING IN COLORADO, REGARDLESS OF THE SIZE OF THE BUILDING OR THE UTILITY SERVICE TERRITORY IN WHICH THE BUILDING LIES, IS ENCOURAGED TO BENCHMARK THE OWNER'S BUILDING AND WORK WITH THE ELECTRIC AND NATURAL GAS UTILITIES SERVICING THE BUILDING TO ACHIEVE PERFORMANCE UPGRADES FOR THE BUILDING.

(11) EACH UTILITY IN COLORADO, REGARDLESS OF ITS NUMBER OF CUSTOMERS, IS ENCOURAGED TO PROVIDE BUILDING OWNERS WITH EASILY ACCESSIBLE AGGREGATED DATA AND TO ADOPT AN AGGREGATION THRESHOLD THAT IS NO MORE THAN THE MINIMUM NUMBER OF TENANTS IDENTIFIED IN THE PUBLIC UTILITIES COMMISSION'S RULE REGARDING A PROPERTY OWNER'S REQUESTS FOR WHOLE-BUILDING ENERGY-USE DATA.

SECTION 5. In Colorado Revised Statutes, 29-12.5-101, **amend** (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 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 deposited with ~~such~~ THE board that ~~are~~ IS not forfeited to ~~such~~ THE board pursuant to ~~paragraph (e) 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 MADE BY A BOARD 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.