

**ENERGY PERFORMANCE CONTRACTING
FOR LOCAL GOVERNMENTS**

Colorado Statutes :

TITLE 29 GOVERNMENT - LOCAL : ENERGY CONSERVATION

29-12.5-101. Definitions.

As used in this article:

(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.)

(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, which contract:

(a) Sets forth savings attributable to the calculated utility 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 cost-savings measures;

(c) Requires the party entering into such contract with the board 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 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 paragraph (c) of this subsection (3) exceed the sum of utility 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;

(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 utility 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.

(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. The savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

(5) "Political subdivision" means a municipality, county, 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 and related operating costs 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 by identifying utility errors and optimizing rate schedules; or

(q) Any other modification, installation, or remodeling approved as a utility cost-savings measure by the board.

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.

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 utility cost savings and operation and maintenance cost savings in buildings or other facilities owned or rented by the political subdivision.

(2) Such analysis and recommendations shall include 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.

Source: L. 91: Entire article added, p. 731, § 1, effective May 1. **L. 2001:** Entire section amended, p. 1096, § 6, effective August 8.

29-12.5-103. Financing utility 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 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 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.

(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 a utility cost-savings 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.

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.

Source: L. 91: Entire article added, p. 732, § 1, effective May 1. **L. 2001:** Entire section amended, p. 1097, § 8, effective August 8.