

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

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LLS NO. 21-0072.01 Jennifer Berman x3286

HOUSE BILL

HOUSE SPONSORSHIP

Kipp and Valdez A., Bennett

SENATE SPONSORSHIP

(None),

BILL TOPIC: "Energy Performance For Buildings"
DEADLINES: Finalize by: JAN 27, 2021 File by: FEB 2, 2021

A BILL FOR AN ACT

101 CONCERNING MEASURES TO IMPROVE ENERGY EFFICIENCY, AND, IN
102 CONNECTION THEREWITH, REQUIRING OWNERS OF LARGE
103 BUILDINGS TO COLLECT AND REPORT ON ENERGY-USE
104 BENCHMARKING DATA AND COMPLY WITH PERFORMANCE
105 STANDARDS RELATED TO ENERGY AND GREENHOUSE GAS
106 EMISSIONS AND MODIFYING STATUTORY REQUIREMENTS
107 REGARDING ENERGY PERFORMANCE CONTRACTS.

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://leg.colorado.gov>.)

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

Section 3 of the bill requires owners of certain large buildings (covered buildings), on an annual basis, to collect and report to the Colorado energy office (office) the covered building's energy use. The bill establishes a process requiring certain electric and gas utilities to provide energy-use data to a covered building owner when requested by the covered building owner.

Section 3 also requires that, on or before June 1, 2027, a covered building owner demonstrate that, in 2026, the covered building met performance standards set forth in the bill. A covered building owner must demonstrate compliance with the performance standards every 5 years after June 1, 2027. The air quality control commission (commission) is required to adopt rules in 2026 or 2027 that extend or modify the performance standards. Thereafter, the commission may, as the commission deems necessary, modify the performance standards by rule.

Section 1 requires the office to assist covered building owners with the reporting requirements set forth in section 3 by:

- Creating a database of covered buildings and owners required to comply with section 3;
- Developing publicly available, digitally interactive maps and lists showing the energy-use and performance-standard data reported;
- Coordinating with any local government that implements its own energy benchmarking requirements or energy performance program, including coordination of reporting requirements; and
- Collecting an annual fee from owners of covered buildings of \$100 per covered building. The office is required to transfer the fees collected to the state treasurer, who will credit the fees to the climate change mitigation and adaptation fund (fund) created in section 1.

Section 2 imposes civil penalties for violations of section 3, ranging from \$500 to \$5,000, depending on whether the violations are first violations or subsequent violations, and requires that the civil penalty payments be credited to the fund. Certain subsequent violations are also subject to a penalty of 2 cents per square foot of gross floor area of the covered building for each day that the violations continue.

Section 4 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.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 24-38.5-102.6
3 and 24-38.5-110 as follows:

4 **24-38.5-102.6. Climate change mitigation and adaptation fund**

5 **- creation - use.** (1) THE CLIMATE CHANGE MITIGATION AND ADAPTATION
6 FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS HEREBY CREATED
7 IN THE STATE TREASURY. THE FUND CONSISTS OF:

8 (a) CIVIL PENALTIES CREDITED TO THE FUND PURSUANT TO
9 SECTION 25-7-122 (1)(i);

10 (b) BUILDING PERFORMANCE PROGRAM FEES CREDITED TO THE
11 FUND PURSUANT TO SECTION 24-38.5-110 (1)(e), WHICH FEES MUST BE
12 SEPARATELY ACCOUNTED FOR IN THE FUND;

13 (c) GIFTS, GRANTS, AND DONATIONS MADE TO THE COLORADO
14 ENERGY OFFICE TO HELP FINANCE ITS ADMINISTRATION OF CLIMATE
15 CHANGE MITIGATION OR ADAPTATION PROGRAMS AND POLICIES;

16 (d) ANY MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE
17 OR TRANSFER TO THE FUND; AND

18 (e) ANY OTHER MONEY CREDITED TO THE FUND.

19 (2) MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE
20 COLORADO ENERGY OFFICE FOR THE PURPOSE OF FINANCING AND
21 ADMINISTERING PROGRAMS AND POLICIES DEVELOPED TO MITIGATE OR
22 ADAPT TO CLIMATE CHANGE THROUGHOUT THE STATE.

23 (3) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
24 INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
25 FUND TO THE FUND.

26 **24-38.5-110. Building performance program - duties of the**
27 **office - county assessor records database - fees - definitions.** (1) THE

1 COLORADO ENERGY OFFICE SHALL IMPLEMENT A BUILDING PERFORMANCE
2 PROGRAM AS FOLLOWS:

3 (a) BASED ON COUNTY ASSESSOR RECORDS AND OTHER AVAILABLE
4 SOURCES OF INFORMATION, THE OFFICE SHALL CREATE A DATABASE OF
5 COVERED BUILDINGS AND OF OWNERS REQUIRED TO COMPLY WITH THE
6 BUILDING PERFORMANCE PROGRAM.

7 (b) UPON REQUEST OF THE OFFICE, A COUNTY ASSESSOR SHALL,
8 USING EXISTING RESOURCES AND ANY ADDITIONAL RESOURCES THAT THE
9 COUNTY ASSESSOR DEEMS NECESSARY, PROVIDE AVAILABLE PROPERTY
10 DATA FROM EXISTING RECORDS TO THE OFFICE AS NECESSARY FOR
11 IMPLEMENTATION OF THIS SECTION.

12 (c) THE OFFICE SHALL MAKE PUBLICLY AVAILABLE, THROUGH
13 DIGITALLY INTERACTIVE MAPS, LISTS, OR OTHER TECHNOLOGY AS
14 DETERMINED BY THE OFFICE, BENCHMARKING DATA FOR ALL COVERED
15 BUILDINGS THAT HAVE REPORTED IN EACH YEAR PURSUANT TO SECTION
16 25-7-142 (3). THE PUBLICLY AVAILABLE DATA MUST NOT INCLUDE ANY
17 CONTACT INFORMATION FOR A COVERED BUILDING THAT IS NOT
18 OTHERWISE PUBLICLY AVAILABLE.

19 (d) THE OFFICE SHALL COORDINATE WITH ANY LOCAL
20 GOVERNMENT THAT IMPLEMENTS ITS OWN ENERGY BENCHMARKING OR
21 ENERGY PERFORMANCE PROGRAM, INCLUDING THE COORDINATION OF
22 REPORTING REQUIREMENTS.

23 (e) TO FINANCE THE OFFICE'S ADMINISTRATION OF THE BUILDING
24 PERFORMANCE PROGRAM, THE OFFICE SHALL COLLECT FROM EACH OWNER
25 OF A COVERED BUILDING AN ANNUAL FEE OF ONE HUNDRED DOLLARS PER
26 COVERED BUILDING. THE OFFICE SHALL TRANSFER THE FEES COLLECTED
27 TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO THE CLIMATE

1 CHANGE MITIGATION AND ADAPTATION FUND CREATED IN SECTION
2 24-38.5-102.6.

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

5 (a) "BENCHMARKING DATA" HAS THE MEANING SET FORTH IN
6 SECTION 25-7-142 (2)(g).

7 (b) "BUILDING PERFORMANCE PROGRAM" MEANS THE
8 BENCHMARKING AND PERFORMANCE STANDARD REQUIREMENTS SET
9 FORTH IN SECTION 25-7-142 (3) AND (8).

10 (c) "COLORADO ENERGY OFFICE" OR "OFFICE" MEANS THE
11 COLORADO ENERGY OFFICE CREATED IN SECTION 24-38.5-101 OR A
12 SUCCESSOR AGENCY.

13 (d) "COVERED BUILDING" HAS THE MEANING SET FORTH IN SECTION
14 25-7-142 (2)(j).

15 (e) "OWNER" HAS THE MEANING SET FORTH IN SECTION 25-7-142
16 (2)(s).

17 **SECTION 2.** In Colorado Revised Statutes, 25-7-122, **add** (1)(i)
18 as follows:

19 **25-7-122. Civil penalties - rules - definitions.** (1) Upon
20 application of the division, the division may collect penalties as
21 determined under this article 7 by instituting an action in the district court
22 for the district in which the air pollution source affected is located, in
23 accordance with the following provisions:

24 (i) (I) (A) ON AND AFTER JUNE 1, 2023, AND EXCEPT AS PROVIDED
25 IN SUBSECTION (1)(i)(I)(B) OF THIS SECTION, AN OWNER OF A COVERED
26 BUILDING THAT VIOLATES SECTION 25-7-142 (3) OR (6) IS SUBJECT TO A
27 CIVIL PENALTY OF UP TO FIVE HUNDRED DOLLARS FOR A FIRST VIOLATION

1 AND UP TO TWO THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION.
2 AN OWNER OF A COVERED BUILDING THAT VIOLATES SECTION 25-7-142 (8)
3 IS SUBJECT TO A CIVIL PENALTY OF UP TO TWO THOUSAND DOLLARS FOR A
4 FIRST VIOLATION AND FOR A SUBSEQUENT VIOLATION UP TO FIVE
5 THOUSAND DOLLARS PLUS, FOR EACH DAY THAT THE VIOLATION
6 CONTINUES, UP TO TWO CENTS PER SQUARE FOOT OF GROSS FLOOR AREA
7 OF THE COVERED BUILDING.

8 (B) THE DIVISION SHALL NOT ASSESS A CIVIL PENALTY WITH
9 REGARD TO A BUILDING OWNED BY A STATUTORY OR HOME RULE CITY,
10 CITY AND COUNTY, OR COUNTY; A SCHOOL DISTRICT AS DEFINED IN
11 SECTION 22-11-103 (29); A STATE INSTITUTION OF HIGHER EDUCATION AS
12 DEFINED IN SECTION 23-1-108 (7)(g)(II); OR A SPECIAL DISTRICT AS
13 DEFINED IN SECTION 32-1-103 (20).

14 (C) NOTWITHSTANDING SECTION 25-7-129, THE DIVISION SHALL
15 TRANSMIT CIVIL PENALTIES COLLECTED PURSUANT TO THIS SUBSECTION
16 (1)(i) TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO THE
17 CLIMATE CHANGE MITIGATION AND ADAPTATION FUND CREATED IN
18 SECTION 24-38.5-102.6.

19 (II) AS USED IN THIS SUBSECTION (1)(i):

20 (A) "COVERED BUILDING" HAS THE MEANING SET FORTH IN
21 SECTION 25-7-142 (2)(j).

22 (B) "GROSS FLOOR AREA" HAS THE MEANING SET FORTH IN
23 SECTION 25-7-142 (2)(p).

24 (C) "OWNER" HAS THE MEANING SET FORTH IN SECTION 25-7-142
25 (2)(s).

26 **SECTION 3.** In Colorado Revised Statutes, **add** 25-7-142 as
27 follows:

1 **25-7-142. Energy benchmarking - data collection and access**
2 **- utility requirements - performance standards - rules - reports -**
3 **definitions - legislative declaration. (1) Legislative declaration.** THE

4 GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT THE
5 REGULATION OF BUILDING PERFORMANCE IS A MATTER OF STATEWIDE
6 CONCERN BECAUSE:

7 (a) AS OF 2020, BUILDINGS REPRESENTED A SIGNIFICANT SOURCE
8 OF GREENHOUSE GAS POLLUTION IN THE STATE OF COLORADO;

9 (b) ENERGY CONSUMPTION AND GREENHOUSE GAS EMISSIONS
10 ASSOCIATED WITH A BUILDING PRODUCE IMPACTS FAR BEYOND ITS WALLS
11 AND THE BOUNDARIES OF THE LOCAL GOVERNMENT WITHIN WHICH THE
12 BUILDING IS LOCATED, INCLUDING COSTS TO UTILITY RATEPAYERS FOR
13 INCREASED ENERGY PRODUCTION, COMMUNITY HEALTH COSTS
14 ASSOCIATED WITH AIR POLLUTION, AND BROADER SOCIETAL COSTS OF
15 ANTHROPOGENIC CLIMATE CHANGE;

16 (c) LARGE BUILDINGS REPRESENT A DISPROPORTIONATE AMOUNT
17 OF THE ENERGY USE AND GREENHOUSE GAS EMISSIONS IN THE STATE, YET
18 BUILDING TENANTS THAT PAY THOSE ENERGY COSTS OFTEN LACK THE
19 ABILITY TO IMPLEMENT BUILDING UPGRADES THAT COULD IMPROVE
20 PERFORMANCE, REDUCE EMISSIONS, AND REDUCE THOSE COSTS;

21 (d) (I) BENCHMARKING AND BUILDING PERFORMANCE STANDARDS
22 WILL SUPPORT JOB GROWTH IN COLORADO. ACCORDING TO THE UNITED
23 STATES CLIMATE ALLIANCE, BEFORE THE ONSET OF COVID-19, WHICH IS
24 THE CORONAVIRUS DISEASE 2019 CAUSED BY THE SEVERE ACUTE
25 RESPIRATORY SYNDROME CORONAVIRUS 2, ALSO KNOWN AS
26 SARS-CoV-2, THE FASTEST GROWING CLEAN ENERGY INDUSTRIES IN
27 COLORADO INCLUDE:

1 (A) TRADITIONAL HEATING, VENTILATION, AND AIR CONDITIONING,
2 TOTALING TEN THOUSAND FOUR HUNDRED THIRTY-EIGHT JOBS; AND

3 (B) ENERGY STAR AND EFFICIENT LIGHTING, TOTALING ELEVEN
4 THOUSAND ONE HUNDRED FIFTY-SIX JOBS.

5 (II) ADDITIONALLY, ANALYSIS CONDUCTED BY ADVANCED
6 ENERGY ECONOMY IDENTIFIED MORE THAN SIXTY THOUSAND ADVANCED
7 ENERGY JOBS IN COLORADO, WITH MORE THAN FIFTY PERCENT OF THOSE
8 JOBS IN ENERGY EFFICIENCY.

9 (e) THE STATE OF COLORADO PROVIDES MANY LOW- AND NO-COST
10 OPTIONS FOR COLORADO PROPERTY OWNERS TO FINANCE BUILDING
11 PERFORMANCE IMPROVEMENTS, INCLUDING:

12 (I) PROPERTY-ASSESSED CLEAN ENERGY FINANCING THAT THE
13 COLORADO NEW ENERGY IMPROVEMENT DISTRICT CREATED IN SECTION
14 32-20-104 PROVIDES, WHEREBY QUALIFYING ENERGY EFFICIENCY AND
15 RENEWABLE ENERGY IMPROVEMENTS ARE PAID BACK VIA AN ASSESSMENT
16 ON ANNUAL PROPERTY TAXES; AND

17 (II) PERFORMANCE CONTRACTING, WHEREBY IMPROVEMENTS ARE
18 PAID FOR BY CONTRACTUALLY GUARANTEED SAVINGS FROM EFFICIENCY
19 UPGRADES;

20 (f) MANY PUBLIC UTILITIES IN THE STATE ALSO PROVIDE
21 TECHNICAL ASSISTANCE AND FINANCIAL INCENTIVES TO HELP PROPERTY
22 OWNERS IMPLEMENT BUILDING PERFORMANCE IMPROVEMENTS; AND

23 (g) IT IS IN THE INTEREST OF THE STATE TO:

24 (I) ESTABLISH A PROGRAM TO HELP COLORADO CITIZENS
25 UNDERSTAND AND TRACK ENERGY USE AND GREENHOUSE GAS EMISSIONS
26 FROM LARGE BUILDINGS; AND

27 (II) ENACT PERFORMANCE STANDARDS NECESSARY TO MEET STATE

1 GREENHOUSE GAS EMISSION-REDUCTION GOALS.

2 (2) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT
3 OTHERWISE REQUIRES:

4 (a) "AGGREGATED DATA" MEANS ELECTRIC OR GAS METER DATA
5 FROM WHICH ANY UNIQUE IDENTIFIER OR OTHER PERSONAL INFORMATION
6 HAS BEEN REMOVED AND THAT A QUALIFYING UTILITY COLLECTS AND
7 AGGREGATES IN AT LEAST MONTHLY INTERVALS FOR AN ENTIRE COVERED
8 BUILDING.

9 (b) "AGGREGATION THRESHOLD" MEANS, FOR EACH QUALIFYING
10 UTILITY, THE MINIMUM NUMBER OF CUSTOMER ACCOUNTS ASSOCIATED
11 WITH A COVERED BUILDING FOR WHICH THE QUALIFYING UTILITY MAY
12 PROVIDE THE OWNER OF THE COVERED BUILDING WITH AGGREGATED DATA
13 UPON REQUEST WITHOUT REQUIRING EACH CUSTOMER'S CONSENT TO HAVE
14 THE CUSTOMER'S ENERGY-USE DATA ACCESSED OR SHARED.

15 (c) "ANSI" MEANS THE AMERICAN NATIONAL STANDARDS
16 INSTITUTE OR ITS SUCCESSOR ORGANIZATION.

17 (d) "ASHRAE" MEANS THE AMERICAN SOCIETY OF HEATING,
18 REFRIGERATING, AND AIR-CONDITIONING ENGINEERS OR ITS SUCCESSOR
19 SOCIETY.

20 (e) "BASELINE YEAR" MEANS A YEAR TO WHICH A PERFORMANCE
21 YEAR IS COMPARED, STARTING IN 2021 AND CONTINUING EVERY FIVE
22 YEARS THEREAFTER.

23 (f) "BENCHMARK" MEANS TO INPUT BENCHMARKING DATA INTO A
24 BENCHMARKING TOOL TO MEASURE AND ASSESS THE ENERGY
25 PERFORMANCE AND GREENHOUSE GAS POLLUTION FOR A COVERED
26 BUILDING FOR THE REPORTING YEAR.

27 (g) EXCEPT AS THE COMMISSION MAY MODIFY BY RULE PURSUANT

1 TO SUBSECTION (7) OF THIS SECTION, "BENCHMARKING DATA" MEANS THE
2 INFORMATION RELATED TO A COVERED BUILDING THAT IS INPUT INTO A
3 BENCHMARKING TOOL AND INCLUDES, AT A MINIMUM:

4 (I) A PHYSICAL DESCRIPTION OF THE COVERED BUILDING AND
5 DESCRIPTIONS OF ITS OPERATIONAL CHARACTERISTICS, INCLUDING:

6 (A) THE NAME OF THE COVERED BUILDING, IF ANY;

7 (B) THE ADDRESS OF THE COVERED BUILDING;

8 (C) THE PRIMARY USES OF THE COVERED BUILDING;

9 (D) THE COVERED BUILDING'S GROSS FLOOR AREA; AND

10 (E) THE YEARS IN WHICH THE COVERED BUILDING HAS BEEN
11 CERTIFIED BY ENERGY STAR AND THE MOST RECENT DATE OF
12 CERTIFICATION, IF APPLICABLE; AND

13 (II) DATA GENERATED BY THE BENCHMARKING TOOL, INCLUDING:

14 (A) THE ENERGY STAR SCORE, IF AVAILABLE;

15 (B) MONTHLY ENERGY USE BY FUEL TYPE;

16 (C) SITE AND SOURCE ENERGY-USE INTENSITY;

17 (D) WEATHER-NORMALIZED SITE AND SOURCE ENERGY-USE
18 INTENSITY;

19 (E) CONFIRMATION THAT DATA QUALITY HAS BEEN CHECKED;

20 (F) ANNUAL MAXIMUM ELECTRICITY DEMAND, IN KILOWATTS;

21 (G) IF AVAILABLE FOR REPORTING THROUGH THE BENCHMARKING
22 TOOL, MONTHLY PEAK ELECTRICITY DEMAND; AND

23 (H) GREENHOUSE GAS EMISSIONS, INCLUDING TOTAL, INDIRECT,
24 AND DIRECT EMISSIONS.

25 (h) EXCEPT AS THE COMMISSION MAY MODIFY BY RULE PURSUANT
26 TO SUBSECTION (7) OF THIS SECTION, "BENCHMARKING TOOL" MEANS THE
27 ENERGY STAR PORTFOLIO MANAGER[®] OR A SUCCESSOR ONLINE RESOURCE

1 USED TO TRACK AND ASSESS THE PERFORMANCE OF CERTAIN PROPERTIES
2 RELATIVE TO SIMILAR PROPERTIES.

3 (i) "COLORADO ENERGY OFFICE" OR "OFFICE" MEANS THE
4 COLORADO ENERGY OFFICE CREATED IN SECTION 24-38.5-101 OR A
5 SUCCESSOR AGENCY.

6 (j) (I) EXCEPT AS THE COMMISSION MAY MODIFY BY RULE
7 PURSUANT TO SUBSECTION (7) OF THIS SECTION, "COVERED BUILDING"
8 MEANS A BUILDING THAT IS OCCUPIED BY A SINGLE OCCUPANT OR GROUP
9 OF TENANTS, AND IS EITHER:

10 (A) A BUILDING OWNED BY THE STATE, OTHER THAN A PROPERTY
11 OWNED BY A STATE INSTITUTION OF HIGHER EDUCATION, WITH A GROSS
12 FLOOR AREA OF FIVE THOUSAND SQUARE FEET OR MORE; OR

13 (B) A NON-STATE-OWNED BUILDING, INCLUDING A BUILDING
14 OWNED BY A STATE INSTITUTION OF HIGHER EDUCATION, COMPRISING A
15 GROSS FLOOR AREA OF FIFTY THOUSAND SQUARE FEET OR MORE.

16 (II) "COVERED BUILDING" DOES NOT INCLUDE:

17 (A) A STORAGE FACILITY OR STAND-ALONE PARKING GARAGE
18 THAT LACKS HEATING AND COOLING; OR

19 (B) A BUILDING IN WHICH MORE THAN HALF OF THE GROSS FLOOR
20 AREA IS USED FOR MANUFACTURING, INDUSTRIAL, OR AGRICULTURAL
21 PURPOSES.

22 (k) "ENERGY STAR" MEANS THE FEDERAL PROGRAM AUTHORIZED
23 BY 42 U.S.C. SEC. 6294a, AS AMENDED, TO HELP CUSTOMERS, BUSINESSES,
24 AND INDUSTRY SAVE MONEY AND PROTECT THE ENVIRONMENT THROUGH
25 THE ADOPTION OF ENERGY-EFFICIENT PRODUCTS AND PRACTICES.

26 (l) "ENERGY STAR SCORE" MEANS THE ONE-TO-ONE-HUNDRED
27 NUMERIC RATING GENERATED BY THE ENERGY STAR PORTFOLIO

1 MANAGER[®] AS A MEASUREMENT OF A BUILDING'S ENERGY EFFICIENCY.

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

4 (n) "FINANCIAL HARDSHIP" MEANS THAT A PROPERTY IS
5 EXPERIENCING AT LEAST ONE OF THE FOLLOWING CONDITIONS:

6 (I) THE PROPERTY HAS BEEN INCLUDED ON A CITY'S, COUNTY'S, OR
7 CITY AND COUNTY'S ANNUAL TAX LIEN SALE LIST WITHIN THE PREVIOUS
8 TWO YEARS;

9 (II) THE PROPERTY IS AN ASSET SUBJECT TO A COURT-APPOINTED
10 RECEIVER THAT CONTROLS THE ASSET DUE TO FINANCIAL STRESS;

11 (III) THE PROPERTY IS OWNED BY A FINANCIAL INSTITUTION AS A
12 RESULT OF A DEFAULT BY A BORROWER;

13 (IV) THE PROPERTY HAS BEEN ACQUIRED BY A DEED IN LIEU OF
14 FORECLOSURE;

15 (V) THE PROPERTY IS THE SUBJECT OF A SENIOR MORTGAGE
16 SUBJECT TO A NOTICE OF DEFAULT; OR

17 (VI) DUE TO THE GOVERNOR DECLARING A DISASTER EMERGENCY
18 PURSUANT TO SECTION 24-33.5-704 (4), THE PROPERTY, IN AT LEAST TWO
19 OF THE PREVIOUS FIVE YEARS, GENERATED ANNUAL RENTAL INCOME OR
20 REVENUE THAT TOTALS SIXTY PERCENT OR LESS OF THE FIVE-YEAR
21 AVERAGE IMMEDIATELY PRECEDING THE DISASTER EMERGENCY
22 DECLARATION.

23 (o) "GREENHOUSE GAS" HAS THE MEANING SET FORTH IN SECTION
24 25-7-140 (6).

25 (p) "GROSS FLOOR AREA" MEANS THE TOTAL PROPERTY AREA, AS
26 MEASURED FROM THE OUTSIDE SURFACE OF EACH EXTERIOR WALL OF THE
27 BUILDING, INCLUDING ABOVE-GRADE AND BELOW-GRADE SPACE.

1 (q) "IES" MEANS THE ILLUMINATING ENGINEERING SOCIETY OR ITS
2 SUCCESSOR SOCIETY.

3 (r) "LOCAL GOVERNMENT" MEANS A STATUTORY OR HOME RULE
4 MUNICIPALITY, COUNTY, OR CITY AND COUNTY.

5 (s) "OWNER" MEANS A PERSON POSSESSING TITLE TO A PROPERTY
6 OR THE PERSON'S DESIGNATED AGENT.

7 (t) "PERFORMANCE YEAR" MEANS THE YEAR IN WHICH
8 PERFORMANCE STANDARDS ARE REQUIRED TO BE MET PURSUANT TO
9 SUBSECTION (8) OF THIS SECTION, BEGINNING IN 2026 AND CONTINUING
10 EVERY FIVE YEARS THEREAFTER.

11 (u) "QUALIFYING UTILITY" MEANS:

12 (I) AN ELECTRIC OR GAS UTILITY WITH FIVE THOUSAND OR MORE
13 ACTIVE COMMERCIAL AND INDUSTRIAL SERVICE CONNECTIONS, ACCOUNTS,
14 OR CUSTOMERS IN THE STATE, INCLUDING:

15 (A) AN INVESTOR-OWNED ELECTRIC OR GAS UTILITY;

16 (B) A COOPERATIVE ELECTRIC ASSOCIATION; OR

17 (C) A MUNICIPALLY OWNED ELECTRIC OR GAS UTILITY; OR

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

21 (v) "RENEWABLE ENERGY" MEANS ENERGY:

22 (I) THAT MEETS THE DEFINITION OF "RENEWABLE ENERGY
23 RESOURCES" SET FORTH IN SECTION 40-2-124 (1)(a)(VII);

24 (II) THAT, TO THE MAXIMUM EXTENT TECHNICALLY FEASIBLE AND
25 LEGALLY ALLOWABLE, IS PRODUCED AS RETAIL DISTRIBUTED GENERATION,
26 AS DEFINED IN SECTION 40-2-124 (1)(a)(VIII), WITH THE REMAINDER
27 PRODUCED BY OFF-SITE SOURCES; AND

1 (III) FOR WHICH ITS RENEWABLE ENERGY CERTIFICATES HAVE
2 BEEN RETIRED ON BEHALF OF THE COVERED BUILDING, AFTER BEING USED
3 FOR COMPLIANCE WITH THE PERFORMANCE STANDARDS SET FORTH IN
4 SUBSECTION (8) OF THIS SECTION.

5 (w) "RENEWABLE ENERGY CERTIFICATE" MEANS THE
6 ENVIRONMENTAL ATTRIBUTES OF ONE MEGAWATT-HOUR OF RENEWABLE
7 ENERGY.

8 (x) "STATE INSTITUTION OF HIGHER EDUCATION" HAS THE
9 MEANING SET FORTH IN SECTION 23-1-108 (7)(g)(II).

10 (y) "TENANT" MEANS A PERSON THAT, PURSUANT TO A RENTAL OR
11 LEASE AGREEMENT, OCCUPIES OR HOLDS POSSESSION OF A BUILDING OR
12 PART OF A BUILDING OR PREMISES.

13 (z) "UNIQUE IDENTIFIER" MEANS A CUSTOMER'S CONTACT
14 INFORMATION DISPLAYED ON A UTILITY BILL SUCH AS THE CUSTOMER'S
15 NAME, MAILING ADDRESS, TELEPHONE NUMBER, OR E-MAIL ADDRESS.

16 (3) **Benchmarking requirements on owners.** (a) ON OR BEFORE
17 JUNE 1, 2022, AND ON OR BEFORE JUNE 1 OF EACH SUBSEQUENT YEAR, THE
18 OWNER OF A COVERED BUILDING SHALL SUBMIT A REPORT OF THE
19 BENCHMARKING DATA FOR THE PREVIOUS CALENDAR YEAR TO THE OFFICE.

20 (b) BEFORE PROVIDING A BENCHMARKING REPORT PURSUANT TO
21 SUBSECTION (3)(a) OF THIS SECTION, AN OWNER SHALL RUN ANY
22 AUTOMATED DATA CHECKING FUNCTION OF THE BENCHMARKING TOOL
23 AND CORRECT ANY ERRORS DISCOVERED.

24 (4) **Utility data requirements.** (a) ON OR BEFORE JANUARY 1,
25 2022, A QUALIFYING UTILITY SHALL:

26 (I) ESTABLISH AN AGGREGATION THRESHOLD THAT IS FOUR OR
27 FEWER TENANTS;

1 (II) PUBLISH ITS AGGREGATION THRESHOLD ON ITS PUBLIC
2 WEBSITE; AND

3 (III) UPON REQUEST OF AN OWNER OF A COVERED BUILDING,
4 PROVIDE AGGREGATED DATA TO THE OWNER.

5 (b) AGGREGATED DATA THAT A QUALIFYING UTILITY PROVIDES AN
6 OWNER PURSUANT TO THIS SUBSECTION (4) MUST BE:

7 (I) AVAILABLE ON, OR ABLE TO BE REQUESTED THROUGH, AN
8 EASILY NAVIGABLE WEB PORTAL OR ONLINE REQUEST FORM USING
9 UP-TO-DATE STANDARDS FOR DIGITAL AUTHENTICATION, INCLUDING
10 SINGLE ONE-TIME PASSWORDS OR MULTI-FACTOR AUTHENTICATION;

11 (II) PROVIDED TO THE OWNER WITHIN THIRTY DAYS AFTER
12 RECEIVING THE OWNER'S VALID WRITTEN OR ELECTRONIC REQUEST;

13 (III) DIRECTLY UPLOADED TO THE OWNER'S BENCHMARKING TOOL
14 ACCOUNT, DELIVERED IN THE SPREADSHEET TEMPLATE SPECIFIED BY THE
15 BENCHMARKING TOOL, OR DELIVERED IN ANOTHER FORMAT APPROVED BY
16 THE OFFICE; AND

17 (IV) PROVIDED TO THE OWNER ON AT LEAST AN ANNUAL BASIS
18 UNTIL THE OWNER REVOKES THE REQUEST FOR AGGREGATED DATA.

19 (c) FOR COVERED BUILDINGS THAT DO NOT MEET THE QUALIFYING
20 UTILITY'S AGGREGATION THRESHOLD, AND THUS REQUIRE TENANT
21 CONSENT TO ACCESS OR SHARE ENERGY-USE DATA, THE CONSENT:

22 (I) MAY BE IN WRITTEN OR ELECTRONIC FORM;

23 (II) MAY BE PROVIDED IN A LEASE AGREEMENT PROVISION;

24 (III) IS VALID UNTIL THE TENANT REVOKES IT; AND

25 (IV) IS NOT REQUIRED IF A TENANT VACATES THE COVERED
26 BUILDING BEFORE EXPLICITLY DENYING THE OWNER CONSENT TO ACCESS
27 AND SHARE THE TENANT'S ENERGY-USE DATA.

1 (5) **Benchmarking waivers and extensions of time.** (a) AN
2 OWNER OF A COVERED BUILDING MAY SEEK A WAIVER FROM THE
3 BENCHMARKING REQUIREMENTS SET FORTH IN SUBSECTION (3) OF THIS
4 SECTION IF THE OWNER SUBMITS DOCUMENTATION TO, AND RECEIVES
5 APPROVAL FROM, THE OFFICE, WHICH DOCUMENTATION ESTABLISHES THAT
6 THE COVERED BUILDING HAS MET ONE OR MORE OF THE FOLLOWING
7 CONDITIONS FOR THE CALENDAR YEAR TO BE BENCHMARKED:

8 (I) THE COVERED BUILDING WAS UNOCCUPIED FOR AT LEAST
9 THIRTY CONSECUTIVE DAYS OF THE YEAR;

10 (II) A DEMOLITION PERMIT WAS ISSUED FOR THE ENTIRE COVERED
11 BUILDING;

12 (III) THE COVERED BUILDING MET ONE OR MORE OF THE
13 CONDITIONS FOR FINANCIAL HARDSHIP; OR

14 (IV) THE COVERED BUILDING DOES NOT MEET A QUALIFYING
15 UTILITY'S AGGREGATION THRESHOLD, ONE OR MORE OF THE TENANTS
16 REFUSED TO PROVIDE THE OWNER WITH PERMISSION TO ACCESS THE
17 TENANT'S RELEVANT ENERGY-USE DATA, THE OWNER PROVIDES PROOF TO
18 THE OFFICE THAT IT REQUESTED PERMISSION FROM THE TENANT OR
19 TENANTS WITHHOLDING CONSENT AT LEAST THIRTY DAYS BEFORE THE
20 BENCHMARKING REPORT WAS DUE, AND THE OWNER SUBMITS A PLAN TO
21 INCLUDE AN ENERGY-USE DATA SHARING PERMISSION PROVISION IN THE
22 NEXT LEASE RENEWAL.

23 (b) AN OWNER OF A COVERED BUILDING MAY REQUEST A TIME
24 EXTENSION FROM THE OFFICE TO SUBMIT A BENCHMARKING REPORT IF THE
25 OWNER SUBMITS DOCUMENTATION TO THE OFFICE DEMONSTRATING THAT,
26 DESPITE THE OWNER'S GOOD-FAITH EFFORT, THE OWNER WAS UNABLE TO
27 COMPLETE THE BENCHMARKING REPORT IN A TIMELY MANNER BECAUSE OF

1 THE FAILURE OR REFUSAL OF A QUALIFYING UTILITY OR A TENANT TO
2 PROVIDE THE NECESSARY INFORMATION OR PERMISSION, AS APPLICABLE.

3 (c) THE OFFICE SHALL NOTIFY THE DIVISION OF ALL APPROVED
4 WAIVERS AND EXTENSIONS OF TIME, THE APPROVAL OF WHICH IS SOLELY
5 WITHIN THE OFFICE'S DISCRETION.

6 (d) PURSUANT TO SUBSECTION (7) OF THIS SECTION, THE
7 COMMISSION MAY, BY RULE, MODIFY THE REQUIREMENTS FOR OBTAINING
8 A WAIVER OR EXTENSION OF TIME PURSUANT TO THIS SUBSECTION (5).

9 (6) **Requirements upon sale or lease of a covered building.**

10 (a) AT THE TIME OF LISTING A COVERED BUILDING FOR SALE OR LEASE,
11 THE OWNER OF THE COVERED BUILDING SHALL FURNISH A COPY OF
12 REPORTED BENCHMARKING DATA FROM THE PREVIOUS CALENDAR YEAR OR
13 FROM THE MOST RECENT TWELVE-MONTH PERIOD OF CONTINUOUS
14 OCCUPANCY TO THE FOLLOWING:

15 (I) PROSPECTIVE BUYERS OR LESSEES;

16 (II) ANY BROKERS, AS DEFINED IN SECTION 12-10-201 (6), WHO
17 MAKE INQUIRY ABOUT THE PROPERTY; AND

18 (III) MAJOR COMMERCIAL REAL ESTATE LISTING SERVICES ON
19 WHICH THE PROPERTY IS LISTED.

20 (b) UPON RECEIPT OF THE BENCHMARKING DATA, A COMMERCIAL
21 REAL ESTATE LISTING SERVICE THAT LISTS PROPERTIES IN THE STATE
22 SHALL INCLUDE IN THE PROPERTY'S LISTING, AT A MINIMUM, THE
23 PROPERTY'S ENERGY STAR SCORE, IF APPLICABLE, AND THE PROPERTY'S
24 ENERGY-USE INTENSITY.

25 (c) IF A COVERED BUILDING CHANGES OWNERSHIP, THE FORMER
26 OWNER SHALL MAKE AVAILABLE TO THE NEW OWNER THE ENERGY-USE
27 DATA; TENANT CONSENT DOCUMENTATION, IF ANY; AND ANY OTHER

1 INFORMATION ABOUT THE PROPERTY THAT IS NECESSARY TO BENCHMARK
2 THE COVERED BUILDING. THE FORMER OWNER SHALL TRANSFER THE
3 RECORD REPRESENTING THE COVERED BUILDING WITHIN THE
4 BENCHMARKING TOOL TO THE NEW OWNER. THE NEW OWNER MAY
5 REQUEST AND RECEIVE FROM A QUALIFYING UTILITY THE AGGREGATED
6 DATA NECESSARY TO FULFILL BENCHMARKING REPORTING REQUIREMENTS.

7 (7) **Benchmarking rules.** THE COMMISSION MAY PROMULGATE
8 RULES TO IMPLEMENT THE BENCHMARKING PROGRAM SET FORTH IN THIS
9 SECTION. ADDITIONALLY, THE COMMISSION MAY, BY RULE, MODIFY THE
10 FOLLOWING:

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

13 (b) THE DEFINITION OF "BENCHMARKING DATA", BUT ONLY IF THE
14 MODIFIED DEFINITION CONCERNS DATA THAT:

15 (I) IS CAPABLE OF BEING RECORDED BY THE BENCHMARKING TOOL;
16 AND

17 (II) INCLUDES THE ENERGY STAR SCORE, IF APPLICABLE, AND
18 ENERGY-USE INTENSITY;

19 (c) THE BENCHMARKING TOOL THAT OWNERS ARE REQUIRED TO
20 USE TO BENCHMARK; AND

21 (d) AFTER JUNE 1, 2029, THE MINIMUM GROSS FLOOR AREA
22 INCLUDED IN THE DEFINITION OF "COVERED BUILDING".

23 (8) **Performance standard requirements.** (a) TO HELP ACHIEVE
24 THE STATEWIDE GREENHOUSE-GAS-EMISSION-REDUCTION TARGETS SET
25 FORTH IN SECTION 25-7-102 (2)(g), THE STATE SHALL IMPLEMENT
26 PERFORMANCE STANDARDS FOR COVERED BUILDINGS.

27 (b) ON OR BEFORE JUNE 1 OF A YEAR FOLLOWING A PERFORMANCE

1 YEAR, AN OWNER OF A COVERED BUILDING SHALL SUBMIT TO THE OFFICE
2 A REPORT, IN A FORM AND MANNER DETERMINED BY THE OFFICE,
3 DEMONSTRATING THAT, IN THE MOST RECENT PERFORMANCE YEAR, THE
4 COVERED BUILDING MET THE PERFORMANCE STANDARDS SET FORTH IN
5 SUBSECTION (8)(c) OR (8)(d) OF THIS SECTION OR, IF THE COMMISSION BY
6 RULE MODIFIES THE PERFORMANCE STANDARDS PURSUANT TO SUBSECTION
7 (10) OF THIS SECTION, THE MODIFIED PERFORMANCE STANDARDS SET
8 FORTH IN THE COMMISSION'S RULES.

9 (c) FOR PERFORMANCE YEAR 2026, AN OWNER OF A COVERED
10 BUILDING SHALL DEMONSTRATE IN ACCORDANCE WITH THE REPORTING
11 REQUIREMENT SET FORTH IN SUBSECTION (8)(b) OF THIS SECTION THAT
12 THE COVERED BUILDING MET ONE OR MORE OF THE FOLLOWING
13 PERFORMANCE STANDARDS OR THE PERFORMANCE STANDARD SET FORTH
14 IN SUBSECTION (8)(d) OF THIS SECTION:

15 (I) THE COVERED BUILDING RECEIVED AN ENERGY STAR SCORE OF:

16 (A) SEVENTY-FIVE OR HIGHER; OR

17 (B) FIFTEEN POINTS HIGHER THAN THE ENERGY STAR SCORE THAT
18 THE COVERED BUILDING RECEIVED DURING ITS MOST RECENT BASELINE
19 YEAR;

20 (II) THE COVERED BUILDING'S WEATHER-NORMALIZED SITE AND
21 SOURCE ENERGY-USE INTENSITY:

22 (A) WAS REDUCED BY AT LEAST FIFTEEN PERCENT COMPARED TO
23 ITS PERFORMANCE DURING THE MOST RECENT BASELINE YEAR; OR

24 (B) IS AT LEAST TWENTY-FIVE PERCENT LOWER THAN THE
25 NATIONAL MEDIAN BY BUILDING TYPE, AS CALCULATED IN THE
26 BENCHMARKING TOOL;

27 (III) THE COVERED BUILDING'S ENERGY-USE INTENSITY MET OR

1 SURPASSED:

2 (A) THE SECTOR-SPECIFIC AND CLIMATE-ZONE-SPECIFIC TARGET
3 DETERMINED BY THE COMMISSION BY RULE; OR

4 (B) IF THE COMMISSION HAS NOT YET PROMULGATED A RULE
5 ESTABLISHING THE TARGET DESCRIBED IN SUBSECTION (8)(c)(III)(A) OF
6 THIS SECTION, THE SECTOR-SPECIFIC AND CLIMATE-ZONE-SPECIFIC TARGET
7 CONTAINED IN THE MOST RECENT EDITION OF ANSI/ASHRAE/IES
8 STANDARD 100-2018, "ENERGY EFFICIENCY IN EXISTING BUILDINGS", OR
9 ITS SUCCESSOR STANDARD; OR

10 (IV) THE COVERED BUILDING IS A MIXED-USE PROPERTY AND:

11 (A) THE OWNER OF THE COVERED BUILDING SUBMITS PROOF TO
12 THE OFFICE THAT THE COVERED BUILDING MEETS OR EXCEEDS THE
13 ENERGY-USE INTENSITY STANDARD SET FORTH IN SUBSECTION
14 (8)(c)(II)(B) OF THIS SECTION, AS DETERMINED BY A WEIGHTED AVERAGE
15 OF SQUARE FOOTAGE BY FUNCTION OR USE; OR

16 (B) SUBMITS AN ENERGY MODEL REPORT STAMPED BY A
17 REGISTERED PROFESSIONAL ENGINEER DEMONSTRATING THAT THE
18 COVERED BUILDING MEETS OR SURPASSES THE EFFICIENCY LEVELS IN ONE
19 OF THE FOLLOWING: ONE OF THE TWO MOST RECENT EDITIONS OF THE
20 INTERNATIONAL CODE COUNCIL'S INTERNATIONAL ENERGY
21 CONSERVATION CODE OR ITS SUCCESSOR CODE OR STANDARD;
22 ANSI/ASHRAE/IES STANDARD 90.1-2019, "ENERGY STANDARD FOR
23 BUILDINGS EXCEPT LOW-RISE RESIDENTIAL BUILDINGS", OR ITS
24 SUCCESSOR STANDARD; OR ANSI/ASHRAE STANDARD 90.2-2018,
25 "ENERGY-EFFICIENT DESIGN OF LOW-RISE RESIDENTIAL BUILDINGS", OR
26 ITS SUCCESSOR STANDARD OR CODE. WHEN SUBMITTING THE ENERGY
27 MODEL REPORT, THE OWNER SHALL ALSO SUBMIT PROOF OF

1 COMMISSIONING OR RECOMMISSIONING THE COVERED BUILDING IN
2 ACCORDANCE WITH ANSI/ASHRAE/IES STANDARD 202-2018,
3 "COMMISSIONING PROCESS FOR BUILDINGS AND SYSTEMS", OR ITS
4 SUCCESSOR STANDARD.

5 (d) AS AN ALTERNATIVE TO THE PERFORMANCE STANDARDS SET
6 FORTH IN SUBSECTION (8)(c) OF THIS SECTION, AN OWNER MAY COMPLY
7 WITH THE PERFORMANCE STANDARD REQUIREMENT FOR PERFORMANCE
8 YEAR 2026 BY DEMONSTRATING THAT, FOR AT LEAST FOUR OF THE FIVE
9 YEARS IMMEDIATELY AFTER THE MOST RECENT BASELINE YEAR, AT LEAST
10 FIFTY PERCENT OF THE COVERED BUILDING'S ELECTRICITY WAS
11 GENERATED FROM RENEWABLE ENERGY AND:

12 (I) THE COVERED BUILDING RECEIVED AN ENERGY STAR SCORE OF:

13 (A) SIXTY-FIVE OR HIGHER; OR

14 (B) TEN POINTS HIGHER THAN THE ENERGY STAR SCORE THAT THE
15 COVERED BUILDING RECEIVED DURING ITS MOST RECENT BASELINE YEAR;

16 (II) THE COVERED BUILDING'S WEATHER-NORMALIZED SITE AND
17 SOURCE ENERGY-USE INTENSITY:

18 (A) WAS REDUCED BY AT LEAST TEN PERCENT COMPARED TO ITS
19 PERFORMANCE DURING THE MOST RECENT BASELINE YEAR; OR

20 (B) IS AT LEAST FIFTEEN PERCENT LOWER THAN THE NATIONAL
21 MEDIAN BY BUILDING TYPE, AS CALCULATED IN THE BENCHMARKING
22 TOOL; OR

23 (III) THE COVERED BUILDING'S ENERGY-USE INTENSITY WAS
24 WITHIN TEN PERCENT OF:

25 (A) THE SECTOR-SPECIFIC AND CLIMATE-ZONE-SPECIFIC TARGET
26 DETERMINED BY THE COMMISSION BY RULE;

27 (B) IF THE COMMISSION HAS NOT YET PROMULGATED A RULE

1 ESTABLISHING THE TARGET DESCRIBED IN SUBSECTION (8)(d)(III)(A) OF
2 THIS SECTION, THE SECTOR-SPECIFIC AND CLIMATE-ZONE-SPECIFIC TARGET
3 CONTAINED IN ANSI/ASHRAE/IES STANDARD 100-2018, "ENERGY
4 EFFICIENCY IN EXISTING BUILDINGS", OR ITS SUCCESSOR STANDARD; OR

5 (C) IF THE COVERED BUILDING IS A MIXED-USE PROPERTY, THE
6 SECTOR-SPECIFIC AND CLIMATE-ZONE-SPECIFIC TARGET DETERMINED BY
7 THE COMMISSION BY RULE OR, IF THE COMMISSION HAS NOT YET
8 PROMULGATED A RULE ESTABLISHING THE TARGET, BY THE STANDARD
9 REFERENCED IN SUBSECTION (8)(d)(III)(B) OF THIS SECTION, AS
10 DETERMINED BY A WEIGHTED AVERAGE OF SQUARE FOOTAGE BY FUNCTION
11 OR USE.

12 (e) IN SUBMITTING A PERFORMANCE REPORT DEMONSTRATING
13 THAT A COVERED BUILDING HAS MET PERFORMANCE STANDARDS, THE
14 OWNER OF THE COVERED BUILDING MAY:

15 (I) SUBSTITUTE A YEAR WITHIN TWO YEARS BEFORE OR AFTER THE
16 RELEVANT BASELINE YEAR AS THE YEAR TO WHICH THE PERFORMANCE
17 YEAR MAY BE COMPARED; OR

18 (II) USE AN ADJUSTED ENERGY STAR SCORE OR ENERGY-USE
19 INTENSITY TO ACCOUNT FOR CHANGES IN THE COVERED BUILDING'S
20 PRIMARY FUNCTION IF THE OWNER DEMONSTRATES TO THE OFFICE THAT
21 A REGISTERED PROFESSIONAL ENGINEER VERIFIED THE ADJUSTMENTS. THE
22 ADJUSTMENTS ARE SUBJECT TO AUDIT OR VERIFICATION BY THE OFFICE.

23 (9) **Performance standard waivers or extensions of time.**

24 (a) FOR PERFORMANCE YEAR 2026 AND, IF EXTENDED BY THE
25 COMMISSION BY RULE PURSUANT TO SUBSECTION (10) OF THIS SECTION,
26 FOR SUBSEQUENT PERFORMANCE YEARS, THE OFFICE SHALL GRANT AN
27 OWNER OF A COVERED BUILDING A WAIVER FROM THE REQUIREMENT TO

1 MEET THE PERFORMANCE STANDARDS BY DEMONSTRATING IN THE
2 PERFORMANCE REPORT THAT:

3 (I) IN THE MOST RECENT FIVE YEARS, THE OFFICE GRANTED A
4 WAIVER FROM BENCHMARKING REPORTING FOR THE COVERED BUILDING
5 IN AT LEAST TWO OF THE FIVE YEARS;

6 (II) THE COVERED BUILDING IS A TENANT-OWNED MULTIFAMILY
7 RESIDENTIAL BUILDING;

8 (III) AT LEAST EIGHTY PERCENT OF THE RESIDENTIAL TENANTS IN
9 THE COVERED BUILDING HAVE A HOUSEHOLD INCOME THAT IS LESS THAN
10 EIGHTY PERCENT OF THE AREA MEDIAN INCOME;

11 (IV) THE COVERED BUILDING IS DESIGNATED A HISTORIC
12 PROPERTY UNDER FEDERAL, STATE, OR LOCAL LAW OR REGISTRY AND:

13 (A) THE COVERED BUILDING WAS BUILT BEFORE 1950;

14 (B) THE OWNER OF THE COVERED BUILDING SUBMITS PROOF THAT
15 THE OWNER CANNOT PERFORM ANY ADDITIONAL ENERGY EFFICIENCY
16 UPGRADES IN WHICH THE INITIAL COSTS OF THE UPGRADES COULD BE
17 RECOVERED FROM ENERGY BILL SAVINGS IN FEWER THAN FIVE YEARS
18 WITHOUT JEOPARDIZING THE HISTORIC DESIGNATION OR STRUCTURAL
19 INTEGRITY OF THE PROPERTY; AND

20 (C) THE OWNER SUBMITS PROOF OF COMMISSIONING OR
21 RECOMMISSIONING THE COVERED BUILDING IN ACCORDANCE WITH
22 ANSI/ASHRAE/IES STANDARD 202-2018, "COMMISSIONING PROCESS
23 FOR BUILDINGS AND SYSTEMS", OR ITS SUCCESSOR STANDARD; OR

24 (V) IN OR AFTER THE MOST RECENT BASELINE YEAR, THE COVERED
25 BUILDING RECEIVED A CERTIFICATE OF OCCUPANCY AND THE OWNER
26 SUBMITS PROOF TO THE OFFICE THAT THE COVERED BUILDING WAS
27 CONSTRUCTED TO MEET OR SURPASS THE EFFICIENCY LEVELS IN ONE OF

1 THE FOLLOWING:

2 (A) ONE OF THE TWO MOST RECENT EDITIONS OF THE
3 INTERNATIONAL CODE COUNCIL'S INTERNATIONAL ENERGY
4 CONSERVATION CODE;

5 (B) ANSI/ASHRAE/IES STANDARD 90.1-2019, "ENERGY
6 STANDARD FOR BUILDINGS EXCEPT LOW-RISE RESIDENTIAL BUILDINGS",
7 OR ITS SUCCESSOR STANDARD; OR

8 (C) ANSI/ASHRAE STANDARD 90.2-2018, "ENERGY-EFFICIENT
9 DESIGN OF LOW-RISE RESIDENTIAL BUILDINGS", OR ITS SUCCESSOR
10 STANDARD OR CODE.

11 (b) AN OWNER OF A COVERED BUILDING MAY REQUEST AN
12 EXTENSION OF TIME FROM THE OFFICE IF THE OWNER SUBMITS
13 DOCUMENTATION TO THE OFFICE DEMONSTRATING THAT, AFTER THE MOST
14 RECENT BASELINE YEAR, THE BENCHMARKING TOOL CONDUCTED A
15 LARGE-SCALE RECALIBRATION, RENDERING THE COVERED BUILDING'S
16 ENERGY STAR SCORE INSUFFICIENT TO MEET THE PERFORMANCE
17 STANDARDS SET FORTH IN SUBSECTION (8) OF THIS SECTION.

18 (10) **Performance standard rules.** (a) ON OR AFTER DECEMBER
19 1, 2026, BUT NO LATER THAN DECEMBER 1, 2027, THE COMMISSION, AFTER
20 CONSULTATION WITH AFFECTED STAKEHOLDERS, SHALL PROMULGATE
21 RULES TO EITHER EXTEND OR MODIFY THE PERFORMANCE STANDARDS SET
22 FORTH IN SUBSECTIONS (8)(c) AND (8)(d) OF THIS SECTION TO REQUIRE ALL
23 COVERED PROPERTIES, IN THE AGGREGATE, TO ACHIEVE OR EXCEED
24 TWENTY PERCENT ENERGY AND GREENHOUSE GAS REDUCTIONS BY 2031
25 COMPARED TO THE ENERGY AND GREENHOUSE GAS LEVELS IN 2021.

26 (b) ON OR BEFORE DECEMBER 1 OF EACH SUBSEQUENT BASELINE
27 YEAR THROUGH 2047, THE COMMISSION, AFTER CONSULTATION WITH

1 AFFECTED STAKEHOLDERS, SHALL PROMULGATE RULES TO EXTEND OR
2 MODIFY THE PERFORMANCE STANDARDS TO ACHIEVE OR EXCEED EMISSION
3 REDUCTIONS THAT ARE CONSISTENT WITH THE STATEWIDE
4 GREENHOUSE-GAS-EMISSION-REDUCTION TARGETS SET FORTH IN SECTION
5 25-7-102 (2)(g); EXCEPT THAT THE REDUCTIONS MUST NOT INCLUDE
6 SAVINGS FROM SYSTEM-WIDE DECARBONIZATION OF ELECTRICITY OR
7 NATURAL GAS UTILITY GRIDS, BUT THE REDUCTIONS MAY INCLUDE
8 SAVINGS FROM UTILITY OR LOCAL ENERGY EFFICIENCY PROGRAMS.

9 (c) AS PART OF ITS RULE-MAKING PURSUANT TO THIS SUBSECTION
10 (10), THE COMMISSION MAY EXTEND OR MODIFY THE WAIVER CRITERIA
11 AND PROCEDURES SET FORTH IN SUBSECTION (9) OF THIS SECTION. THE
12 COMMISSION'S RULES MUST NOT UNDULY BURDEN ANY OF THE FOLLOWING
13 BUILDINGS:

14 (I) HIGH-PERFORMANCE BUILDINGS;

15 (II) TENANT-OWNED MULTIFAMILY RESIDENTIAL BUILDINGS;

16 (III) RESIDENTIAL BUILDINGS PRIMARILY USED TO HOUSE
17 LOW-INCOME HOUSEHOLDS;

18 (IV) PROPERTIES BUILT BEFORE 1950 THAT HAVE BEEN
19 DESIGNATED HISTORIC PROPERTIES; OR

20 (V) BUILDINGS OWNED BY A LOCAL GOVERNMENT.

21 (d) ON OR AFTER JUNE 1, 2029, BUT BEFORE JUNE 1, 2030, THE
22 COMMISSION SHALL COMMENCE A RULE-MAKING PROCEEDING TO
23 CONSIDER REDUCING THE SIZE THRESHOLD OF A COVERED BUILDING FOR
24 PURPOSES OF MEETING THE PERFORMANCE STANDARDS SET FORTH IN
25 SUBSECTION (8) OF THIS SECTION OR RULES PROMULGATED PURSUANT TO
26 THIS SUBSECTION (10). THE COMMISSION MAY ADOPT SUBSEQUENT RULES
27 TO LOWER THE SIZE THRESHOLD.

1 (11) **Saving clause.** THIS SECTION DOES NOT RESTRICT:

2 (a) THE ABILITY OF A QUALIFYING UTILITY TO PROVIDE INCENTIVES
3 OR OTHER ENERGY EFFICIENCY PROGRAM SERVICES FOR COVERED
4 BUILDINGS;

5 (b) THE ABILITY OF AN INVESTOR-OWNED UTILITY TO TAKE CREDIT,
6 AS DEEMED APPROPRIATE BY THE PUBLIC UTILITIES COMMISSION, FOR
7 ENERGY OR GREENHOUSE GAS EMISSION SAVINGS ACHIEVED FOR COVERED
8 BUILDINGS;

9 (c) THE ABILITY OF A QUALIFIED UTILITY TO SET AN AGGREGATION
10 THRESHOLD THAT IS LESS THAN FOUR; OR

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

14 **SECTION 4.** In Colorado Revised Statutes, 29-12.5-101, **amend**
15 (3) introductory portion, (3)(f), and (3)(h); and **repeal** (3)(g) as follows:

16 **29-12.5-101. Definitions.** As used in this article 12.5:

17 (3) "Energy performance contract" means a contract for
18 evaluations, recommendations, or implementation of one or more energy
19 saving measures designed to produce utility ~~costs~~ COST savings, operation
20 and maintenance cost savings, or vehicle fleet operational and fuel cost
21 savings, which contract:

22 (f) Requires ~~such~~ A board, upon termination or expiration of the
23 contract, to return to ~~such~~ THE party any ~~moneys~~ MONEY THAT THE PARTY
24 deposited with ~~such~~ THE board ~~that are~~ AND DID not ~~forfeited~~ FORFEIT to
25 ~~such~~ THE board pursuant to ~~paragraph (c) of this subsection (3)~~
26 SUBSECTION (3)(e) OF THIS SECTION; AND

27 (g) ~~Requires that not less than one-tenth of all payments, except~~

1 ~~payments for maintenance and repairs and obligations on the termination~~
2 ~~of the contract prior to expiration, to be made by such board shall be~~
3 ~~made within two years from the date of execution of the contract; and~~

4 (h) Requires that the ~~remaining such payments to be made by such~~
5 ~~board shall be made within twelve years from the date of execution of the~~
6 ~~contract, except that the maximum term of the payments shall~~ THAT THE
7 BOARD MAKES MUST be less than the cost-weighted average useful life of
8 energy cost-savings equipment for which the contract is made, not to
9 exceed twenty-five years.

10 **SECTION 5. Act subject to petition - effective date -**
11 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
12 the expiration of the ninety-day period after final adjournment of the
13 general assembly; except that, if a referendum petition is filed pursuant
14 to section 1 (3) of article V of the state constitution against this act or an
15 item, section, or part of this act within such period, then the act, item,
16 section, or part will not take effect unless approved by the people at the
17 general election to be held in November 2022 and, in such case, will take
18 effect on the date of the official declaration of the vote thereon by the
19 governor.

20 (2) This act applies to conduct occurring on or after the applicable
21 effective date of this act.