

STATE OF NEW YORK

1075

2019-2020 Regular Sessions

IN SENATE

January 10, 2019

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public authorities law and the environmental conservation law, in relation to establishing the energy performance benchmarking program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The legislature hereby finds and declares that New York
2 state is dedicated to the mutually compatible goals of environmental
3 protection, energy security, and economic growth; increasing energy
4 efficiency has been identified as among the most cost-effective methods
5 for reducing greenhouse gas and other environmental pollutant emissions
6 and increasing energy security; increasing energy efficiency can lead to
7 increased jobs and a reduction in building operating expenses; and New
8 York state is committed to implementing new policies to promote the
9 efficient use of energy and natural resources in the interest of the
10 long-term protection and enhancement of the state's environment, economy
11 and public health.

12 § 2. The public authorities law is amended by adding a new section
13 1018 to read as follows:

14 § 1018. Benchmarking. 1. Definitions. For the purposes of this
15 section, the following terms are defined as follows:

16 a. "Affected state entities" means (i) all agencies and departments
17 over which the governor has executive authority, and (ii) all public
18 benefit corporations, public authorities and commissions, for which the
19 governor appoints the chair, the chief executive, or the majority of
20 board members, except for the port authority of New York and New Jersey.

21 b. "Average source energy use intensity" or "average EUI" means the
22 average source energy use per square foot for all state-owned and
23 managed buildings.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 c. "Source energy" means all the energy used in delivering energy to a
2 site, including power generation, transmission and distribution losses.

3 2. Energy reduction target. By April first, two thousand twenty-four,
4 all affected state entities shall collectively reduce the average EUI in
5 state-owned and managed buildings by at least twenty percent from a
6 baseline of the average EUI of such buildings for state fiscal year two
7 thousand fourteen--two thousand fifteen ("target").

8 3. Obligations to meet target. a. Central management and implementa-
9 tion team: the New York power authority ("NYPA") shall establish a
10 central management and implementation team ("CMIT") to administer this
11 section. (i) The CMIT is hereby directed and authorized to:

12 (a) take all appropriate measures to ensure that the target is met;

13 (b) direct affected state entities to comply with the requirements of
14 this section;

15 (c) create guidelines ("guidelines") within nine months of the effec-
16 tive date of this section to assist affected state entities in complying
17 with this section, and thereafter update such guidelines as necessary;

18 (d) provide strategic, technical, and other assistance to each
19 affected state entity to support implementation of this section;

20 (e) develop annual milestones for achieving the target over the next
21 seven years within twelve months of the effective date of this section;

22 (f) develop and implement reporting requirements to document each
23 affected state entity's progress toward meeting the target;

24 (g) develop a comprehensive operations and maintenance plan for the
25 state's building portfolio to help achieve no-cost and low-cost effi-
26 ciency improvements and ensure that efficiency savings are sustained;
27 and

28 (h) submit an annual report to the governor by January fifteenth of
29 each year, beginning in two thousand nineteen, detailing the overall
30 progress affected state entities are making toward meeting the target
31 requirements. The target requirements for the annual report shall be
32 contained in the guidelines.

33 (ii) The office of general services and the New York state energy
34 research and development authority are hereby directed to provide tech-
35 nical assistance to the CMIT and each of the affected state entities
36 with respect to complying with and implementing the requirements of this
37 section and those established by the CMIT pursuant to this section.

38 b. Affected state entities. In addition to the requirements estab-
39 lished above, each of the affected state entities shall comply with the
40 following:

41 (i) Benchmarking. For each state fiscal year, each affected state
42 entity shall measure the energy use in state-owned and managed buildings
43 having an area greater than twenty thousand square feet. Buildings on
44 master-metered campuses shall be benchmarked at the campus level until
45 they are sub-metered at the building level, after which point those
46 buildings shall be benchmarked at the building level.

47 (ii) Audits. Buildings that receive low benchmark scores, as defined
48 by the guidelines, shall undergo an American society of heating, refrig-
49 eration and air-conditioning engineers ("ASHRAE") level II energy audit,
50 or any other comparable audit that the CMIT approves. Campuses that have
51 above-average EUIs or poor benchmark scores, as defined by the guide-
52 lines, or are otherwise prioritized by the affected state entities and
53 the CMIT, shall undergo a campus-wide ASHRAE level II energy audit or
54 any other comparable audit approved by the CMIT. In addition to energy
55 efficiency measures, the audits shall identify opportunities for cost

effective on-site renewable generation and high-efficiency combined heat and power.

(iii) Required capital projects and energy optimization measures. Affected state entities shall implement a cost-effective portfolio of measures identified and recommended in the audit and shall complete or make substantial progress toward completion of such measures within two years of completion of the audit. A portfolio may include, but shall not be limited to, no- and low-cost operational improvements, retro-commissioning, capital energy efficiency retrofits, on-site renewable and high-efficiency combined heat and power, and other measures identified by the CMIT.

(iv) Sub-metering. Affected state entities shall work with the CMIT to prioritize sub-metering for all relevant energy sources of buildings larger than one hundred thousand square feet on a master-metered campus to identify ways to finance such sub-metering. All buildings having an area larger than one hundred thousand square feet on master-metered campuses shall be sub-metered for all fuels and other energy sources by December thirty-first, two thousand twenty, to enable individual building benchmarking unless the affected state entity that owns or operates the building can demonstrate to the CMIT that it is not cost-effective or feasible to do so.

(v) Incorporating energy efficiency analysis in the capital planning process. As part of the capital planning process, all affected state entities shall include an energy efficiency analysis in the design phase of all capital project plans. The capital project shall include energy efficient measures or technologies determined to be the most cost-effective, as defined by the guidelines.

(vi) Credits. Affected state entities may receive credit towards the target for increasing energy efficiency in leased space. In addition, affected state entities may receive credit towards meeting the target for installing on-site renewable generation if the host site for such renewable generation has deployed all cost-effective energy efficiency improvements consistent with the goals of this section. Affected state entities shall consult with and apply to the CMIT concerning such credits.

(vii) Reporting. No later than October first of each calendar year, each affected state entity shall submit all information requested by the CMIT on all state-owned and managed buildings having an area over twenty thousand square feet, as well as any other information related to assessing compliance with this section.

c. Exemptions. Electric usage attributable to vehicle charging shall not be included in the target and requirements of this section. The CMIT is authorized to provide other exemptions for good cause shown pursuant to criteria and procedures established in the guidelines, including exceptions associated with buildings that have obtained and maintained ENERGY STAR or similar certification, or have benchmark scores placing such buildings in the top quartile of comparable buildings for the particular year at issue. Affected state entities shall submit requests for annual exemptions to the CMIT. Any such request for exemptions and resulting determination by the CMIT shall be included in the annual report.

§ 3. Article 19 of the environmental conservation law is amended by adding a new title 13 to read as follows:

TITLE 13

BENCHMARKING

Section 19-1301. Benchmarking.

1 § 19-1301. Benchmarking.

2 The energy and water use of covered buildings shall be benchmarked in
3 accordance with this section.

4 1. Definitions. As used in this section, the following terms shall
5 have the following meanings:

6 a. "Benchmark" means to input and submit to the benchmarking tool the
7 total use of energy and water for a building for the previous calendar
8 year and other descriptive information for such building as required by
9 the benchmarking tool.

10 b. "Benchmarking tool" means the internet-based database system devel-
11 oped by the United States environmental protection agency, and any
12 complementary interface designated by the department, to track and
13 assess the energy and water use of certain buildings relative to similar
14 buildings.

15 c. "Covered building" means as it appears in the records of the
16 department of taxation and finance:

17 (i)(a) a building that exceeds fifty thousand gross square feet, (b)
18 two or more buildings on the same tax lot that together exceed one
19 hundred thousand gross square feet, or (c) two or more buildings held in
20 the condominium form of ownership that are governed by the same board of
21 managers and that together exceed one hundred thousand gross square
22 feet.

23 (ii) Exception: The term "covered building" shall not include:

24 (a) Any building that is a government building.

25 (b) Any building that is owned by the government.

26 (c) Real property classified as class one pursuant to subdivision one
27 of section eighteen hundred two of the real property tax law.

28 d. "Data center" means a room or rooms used primarily to house high
29 density computing equipment, such as server racks, used for data storage
30 and processing.

31 e. "Dwelling unit" means a single unit consisting of one or more habi-
32 table rooms, occupied or arranged to be occupied as a unit separate from
33 all other units within a building, and used primarily for residential
34 purposes and not primarily for professional or commercial purposes.

35 f. "Energy" means electricity, natural gas, fuel oil and steam.

36 g. "Owner" means the owner of record, provided that "owner" shall be
37 deemed to include:

38 (i) the net lessee in the case of a building subject to a net lease
39 with a term of at least forty-nine years, inclusive of all renewal
40 options,

41 (ii) the board of managers in the case of a condominium, and

42 (iii) the board of directors in the case of a cooperative apartment
43 corporation.

44 h. "Tenant" means any tenant, tenant-stockholder of a cooperative
45 apartment corporation, condominium unit or owner or other occupant.

46 2. Benchmarking required for covered buildings. The owner of a covered
47 building shall annually benchmark such covered building no later than
48 May first, two thousand twenty-one, and no later than every May first
49 thereafter. Benchmarking of water use shall not be required unless the
50 building was equipped with automatic meter reading equipment by the
51 department for the entirety of the previous calendar year. The owner or
52 the owner's representative performing the benchmarking shall consult
53 with the operating staff of the building, as appropriate.

54 a. Obligation to request and to report information. Where a unit or
55 other space in a covered building, other than a dwelling unit, is occu-
56 pled by a tenant and such unit or space is separately metered by a util-

ity company, the owner of such building shall request from such tenant information relating to such tenant's separately metered energy use for the previous calendar year and such tenant shall report such information to such owner.

(i) Owner solicitation of tenant information. Such owner shall request information relating to such tenant's separately metered energy use for the previous calendar year no earlier than January first and no later than January thirty-first of any year in which the owner is required to benchmark such building. The department may require that such owner provide such tenant with a form designated by the department to report such information.

(ii) Tenant reporting of information. Such tenant shall report information relating to such tenant's separately metered energy use for the previous calendar year no later than February fifteenth of any year in which the owner is required to benchmark such building. Such information shall be reported in a form and manner determined by the department.

(iii) Provision of information prior to vacating a unit or other space. Where such owner receives notice that such tenant intends to vacate such unit or other space before reporting information in accordance with this paragraph, such owner shall request information relating to such tenant's energy use for any period of occupancy relevant to such owner's obligation to benchmark. Any such tenant shall report such information to the owner of such building prior to vacating such unit or other space or, if such information is not available prior to vacating such unit or other space, as soon as practicable thereafter, regardless of whether such owner has requested information pursuant to this section. Such information shall be reported in a form and manner determined by the department.

(iv) Continuing obligation to benchmark. The failure of any or all tenants to report the information required by this paragraph to the owner shall not relieve such owner of the obligation to benchmark pursuant to this title, provided that such owner shall not be required to benchmark such information reported by a tenant unless otherwise available to such owner.

b. Preservation of documents, inspection, and audit. Owners of covered buildings shall maintain such records as the department determines are necessary for carrying out the purposes of this article, including but not limited to energy and water bills and reports or forms received from tenants. Such records shall be preserved for a period of three years, provided that the commissioner may consent to their destruction within that period or may require that such records be preserved longer than such period. At the request of the department, such records shall be made available for inspection and audit by the department at the place of business of the owner or at the offices of the department during normal business hours.

c. Violations. It shall be unlawful for the owner of a covered building to fail to benchmark pursuant to this subdivision. The commissioner shall classify such violation as a lesser violation.

3. Direct upload. Information shall be directly uploaded to the benchmarking tool in accordance with the following:

a. Direct upload by a utility company or other source. The department shall encourage and facilitate any utility company or any other source authorized by the department to upload directly to the benchmarking tool, as soon as practicable, information necessary to benchmark a building. Where information is uploaded directly to the benchmarking tool by a utility company or other authorized source, owners and tenants

1 shall not be obligated to request and report such information pursuant
2 to subparagraph (ii) of paragraph (a) of subdivision two of this
3 section.

4 b. Direct upload by the department. The department shall upload
5 directly to the benchmarking tool information on water use at all build-
6 ings that were equipped with automatic meter reading equipment by the
7 department for the entirety of the previous calendar year and that are
8 subject to the benchmarking requirements of this title.

9 4. Suspension. The commissioner may suspend all or part of the
10 requirement to benchmark pursuant to this title upon a written finding
11 that a technological deficiency in the benchmarking tool precludes
12 compliance with this title. The commissioner may lift all or part of any
13 such suspension upon a written finding that such deficiency has been
14 corrected. The department shall notify the governor, the speaker of the
15 assembly, the temporary president of the senate, and the department of
16 taxation and finance promptly upon issuing a suspension or lifting a
17 suspension pursuant to this section.

18 5. Notification and transmission of information. The department of
19 taxation and finance shall:

20 a. Annually notify owners of covered buildings of their obligation to
21 benchmark pursuant to subdivision two of this section, provided that the
22 failure of the department of taxation and finance to notify any such
23 owner shall not affect the obligation of such owner to benchmark pursu-
24 ant to such section.

25 b. Notify owners of covered buildings of any suspension or lifting of
26 a suspension pursuant to subdivision four of this section.

27 c. Make available to the department information regarding owners of
28 covered buildings for which no benchmarking information was generated by
29 the benchmarking tool.

30 6. Disclosure. The department of taxation and finance shall make
31 information generated by the benchmarking tool available to the public
32 on the internet no later than September first, two thousand twenty-two,
33 no later than every September first thereafter for covered buildings
34 whose primary use is residential, as determined by the department of
35 taxation and finance, and no later than September first, two thousand
36 twenty-three, and no later than every September first thereafter for
37 covered buildings whose primary use is residential, as determined by the
38 department of taxation and finance. Such information shall include, but
39 need not be limited to:

40 a. the energy utilization index,

41 b. the water use per gross square foot,

42 c. where available, a rating that compares the energy and water use of
43 the building to that of similar buildings, and

44 d. a comparison of data across calendar years for any years such
45 building was benchmarked. Information generated by the benchmarking tool
46 for the two thousand twenty calendar year for covered buildings, and for
47 the two thousand twenty-one calendar year for covered buildings whose
48 primary use is residential, as determined by the department of taxation
49 and finance, shall not be disclosed. Exception: Ratings generated by the
50 benchmarking tool for a covered building that contains a data center,
51 television studio, and/or trading floor that together exceed ten percent
52 of the gross square footage of any such building shall not be disclosed
53 until the department determines that the benchmarking tool can make
54 adequate adjustments for such facilities. When the department determines
55 that the benchmarking tool can make such adjustments, it shall report
56 such determination to the governor, the speaker of the assembly and the

1 temporary president of the senate. Until such determination is made, the
2 department shall report biennially to the governor, the speaker of the
3 assembly and the temporary president of the senate that the benchmarking
4 tool is unable to make such adjustments.

5 7. Report. No later than December thirty-first of two thousand twen-
6 ty-two and two thousand twenty-three, respectively, the department shall
7 prepare, submit to the governor, the speaker of the assembly, the tempo-
8 rary president of the senate, and post on the internet a report review-
9 ing and evaluating the administration and enforcement of this title and
10 analyzing data obtained from the benchmarking tool. Such report shall
11 contain information regarding:

12 a. the energy and water efficiency of buildings covered by this
13 section,

14 b. the accuracy of benchmarked data and whether there is a need to
15 train and/or certify individuals who benchmark,

16 c. compliance with the requirements of this title,

17 d. any administrative and legislative recommendations for strengthen-
18 ing the administration and enforcement of this title,

19 e. the effectiveness of the benchmarking tool in accounting for state
20 of New York conditions, including, but not limited to, high density
21 occupancies, use of steam, large building size, and specific high-energy
22 uses such as data centers, television studios, and trading floors, and

23 f. such other information and analyses as the department deems appro-
24 priate.

25 8. Rules. The department and the department of taxation and finance
26 may promulgate such rules as deemed necessary to carry out the
27 provisions of this title.

28 § 4. This act shall take effect immediately.