

# STATE OF NEW YORK

2415

2021-2022 Regular Sessions

## IN ASSEMBLY

January 19, 2021

Introduced by M. of A. FAHY, ENGLEBRIGHT, SEAWRIGHT, GRIFFIN, DICKENS, SIMON, MAGNARELLI, JACOBSON, COLTON, FERNANDEZ, COOK -- read once and referred to the Committee on Energy

AN ACT to amend the energy law, in relation to developing and implementing benchmarking standards for the total annual use of energy and water for certain buildings

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

1 Section 1. Section 11-102 of the energy law is amended by adding three  
2 new subdivisions 3-a, 3-b and 7-a to read as follows:

3 3-a. "Benchmarking." The input and submission to the benchmarking tool  
4 of the total use of energy and water for a building for the previous  
5 calendar year and any other descriptive information for such building as  
6 required by the benchmarking tool.

7 3-b. "Benchmarking tool." The internet-based database system developed  
8 by the United States environmental protection agency, and any complemen-  
9 tary interface designated by the department of state, to track and  
10 assess the energy and water use of certain buildings relative to similar  
11 buildings.

12 7-a. "Covered building." (a) A building located in a city with a popu-  
13 lation of less than one million that exceeds twenty-five thousand gross  
14 square feet as recorded by the New York state department of taxation and  
15 finance, (b) two or more buildings on the same tax lot that together  
16 exceed fifty thousand gross square feet, or (c) two or more condomin-  
17 iums, devoted exclusively to non-residential purposes, held under a  
18 lease or sublease, or separate unit leases or subleases, the unexpired  
19 term or terms of which on the date of recording of the declaration shall  
20 not be less than thirty years, and are governed by the same board of  
21 governors that together exceed fifty thousand gross square feet.

22 § 2. The energy law is amended by adding a new section 11-111 to read  
23 as follows:

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

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1 § 11-111. Benchmarking standards. 1. The department of state shall  
2 promulgate rules and regulations to institute benchmarking standards for  
3 covered buildings as defined in subdivision seven-a of section 11-102 of  
4 this article.

5 2. Such standards shall include provisions directing that an owner of  
6 a covered building shall benchmark such covered building no later than  
7 May first, two thousand twenty-three and no later than May first annual-  
8 ly thereafter. Furthermore, such rules shall specify that benchmarking  
9 of water use shall not be required unless the building was equipped with  
10 automatic meter reading equipment by the department of state for the  
11 entirety of the previous calendar year. The owner or the owner's repre-  
12 sentative performing the benchmarking shall consult with the operating  
13 staff of the building, as appropriate.

14 3. Where a unit or other space in a covered building is occupied by a  
15 tenant and such unit or space is separately metered by a utility compa-  
16 ny, the owner of such building shall request from such tenant informa-  
17 tion relating to such tenant's separately metered energy use for the  
18 previous calendar year.

19 4. Such tenant shall report information requested pursuant to subdivi-  
20 sion three of this section relating to such tenant's separately metered  
21 energy use for the previous calendar year no later than February  
22 fifteenth of any year in which the owner is required to benchmark such  
23 building. Such information shall be reported in a form and manner as  
24 determined by the department of state.

25 5. Where an owner receives notice that a tenant intends to vacate a  
26 unit or other space prior to reporting information in accordance with  
27 subdivisions three and four of this section, such owner shall request  
28 information relating to such tenant's energy use for any period of occu-  
29 pancy relevant to such owner's obligation to benchmark. Any such tenant  
30 shall report such information to the owner of such building prior to  
31 vacating such unit or other space, or, if such information is not avail-  
32 able prior to vacating such unit or other space, as soon as practicable  
33 thereafter, regardless of whether such owner has requested information  
34 pursuant to this section.

35 6. The failure of any or all tenants to report the information  
36 required by subdivisions four and five of this section to the owner  
37 shall not relieve such owner of the obligation to benchmark pursuant to  
38 this section, provided, however, that such owner shall not be required  
39 to include in such benchmark information not reported by a tenant unless  
40 otherwise available to such owner.

41 7. An owner of a covered building shall maintain any such records as  
42 the department of state determines are necessary for carrying out the  
43 purposes of this section, including but not limited to, any energy or  
44 water bill, and any report or form received from a tenant. Such records  
45 shall be preserved for a period of three years. At the request of the  
46 department of state, such records shall be made available for inspection  
47 and audit at the place of business of the owner during normal business  
48 hours.

49 8. It shall be unlawful for the owner of a covered building to fail to  
50 benchmark pursuant to subdivision two of this section.

51 9. Information gathered pursuant to this section shall be directly  
52 uploaded to the benchmarking tool in accordance with the following:

53 (a) The department of state shall encourage and facilitate any utility  
54 company or any other source authorized by the department of state to  
55 upload directly to the benchmarking tool any information necessary to  
56 benchmark a building within sixty days of the collection of such infor-

1 mation. Where information is uploaded directly by utility company or  
2 other authorized source, neither the owner nor any tenant shall be obli-  
3 gated to request or report such information pursuant to subdivision two,  
4 three, four or five of this section as applicable.

5 (b) The department of state shall upload directly to the benchmarking  
6 tool information on water use at all buildings that were equipped with  
7 automatic meter reading equipment for the entirety of the previous  
8 calendar year and that are subject to the benchmarking requirements of  
9 this section.

10 10. The department of state may suspend all or part of the requirement  
11 to benchmark pursuant to this section upon a written finding that a  
12 technological deficiency in the benchmarking tool precludes compliance  
13 with this section. The department of state shall notify the members of  
14 the state fire prevention and building code council, the governor and  
15 the commissioner of the department of environmental conservation prompt-  
16 ly upon issuing a suspension of lifting a suspension pursuant to this  
17 section.

18 11. The department of state shall make a list of any buildings for  
19 which no benchmarking information was generated by the benchmarking  
20 tool.

21 12. The department of state shall:

22 (a) Annually notify all owners of covered buildings of their obli-  
23 gations to benchmark pursuant to subdivision four of this section,  
24 provided that the failure of the department of state to notify any such  
25 owner shall not affect the obligation of such owner to benchmark pursu-  
26 ant to this section.

27 (b) Notify all owners of a covered building of any suspension or the  
28 lifting of a suspension pursuant to subdivision ten of this section.

29 13. The department of state shall make all information generated by  
30 the benchmarking tool available to the public on the department's  
31 website no later than September first, two thousand twenty-three and no  
32 later than September first annually thereafter for any covered building  
33 whose primary use is not residential, as determined by the department of  
34 state, and no later than September first, two thousand twenty-four and  
35 no later than September first annually thereafter for covered buildings  
36 whose primary use is residential as determined by the department of  
37 state. Such information shall include, but not be limited to, (a) the  
38 energy utilization index, (b) the water use per gross square feet, (c)  
39 where available, a rating that compares the energy and water use of the  
40 building to that of similar buildings, (d) a comparison of data across  
41 calendar years for any years such building was benchmarked, (e) effi-  
42 ciency findings categorized by building type, and (f) any other such  
43 information and analyses as the department of state deems appropriate.

44 14. (a) The New York state energy research and development authority  
45 shall make recommendations regarding the implementation of a benchmark-  
46 ing program no later than September first, two thousand twenty-two. Such  
47 recommendations shall include qualifications for benchmarking consult-  
48 ants and recommendations on oversight and exemptions from benchmarking  
49 requirements. Such recommendations shall be adopted by the department of  
50 state.

51 (b) The New York state energy research and development authority shall  
52 make recommendations regarding changes and updates to the code based on  
53 the findings of the benchmarking tool no later than January first, two  
54 thousand twenty-four and no later than January first annually thereaft-  
55 er.

1 (c) The department of state shall promulgate rules and regulations  
2 pursuant to such recommendations made by the New York state energy  
3 research and development authority and shall issue a report on summariz-  
4 ing such regulatory changes and the status of their implementation no  
5 later than April first, two thousand twenty-four and no later than April  
6 first annually thereafter.

7 § 3. This act shall take effect immediately.