STATE OF NEW YORK

2415

2021-2022 Regular Sessions

IN ASSEMBLY

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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:

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

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

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

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

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

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

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

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

3. Where a unit or other space in a covered building is occupied by a tenant and such unit or space is separately metered by a utility 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.

4. Such tenant shall report information requested pursuant to subdivision three of this section 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 as determined by the department of state.

5. Where an owner receives notice that a tenant intends to vacate a unit or other space prior to reporting information in accordance with subdivisions three and four of this section, 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.

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

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

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

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

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

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

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

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

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

12. The department of state shall:

(a) Annually notify all owners of covered buildings of their obligations to benchmark pursuant to subdivision four of this section, provided that the failure of the department of state to notify any such owner shall not affect the obligation of such owner to benchmark pursuant to this section.

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

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

14. (a) The New York state energy research and development authority shall make recommendations regarding the implementation of a benchmarking program no later than September first, two thousand twenty-two. Such recommendations shall include qualifications for benchmarking consultants and recommendations on oversight and exemptions from benchmarking requirements. Such recommendations shall be adopted by the department of state.

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

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

§ 3. This act shall take effect immediately.