STATE OF NEW YORK

3188

2023-2024 Regular Sessions

IN SENATE

January 30, 2023

Introduced by Sen. HOYLMAN-SIGAL -- 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:

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

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

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

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

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

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

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

2. Energy reduction target. By April first, two thousand twenty-eight, all affected state entities shall collectively reduce the average EUI in state-owned and managed buildings by at least twenty percent from a baseline of the average EUI of such buildings for state fiscal year two thousand eighteen--two thousand nineteen ("target").

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

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

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

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

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

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

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

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

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

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

b. Affected state entities. In addition to the requirements established above, each of the affected state entities shall comply with the following:

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

(ii) Audits. Buildings that receive low benchmark scores, as defined by the guidelines, shall undergo an American society of heating, refrigeration and air-conditioning engineers ("ASHRAE") level II energy audit, or any other comparable audit that the CMIT approves. Campuses that have above-average EUIs or poor benchmark scores, as defined by the guidelines, or are otherwise prioritized by the affected state entities and the CMIT, shall undergo a campus-wide ASHRAE level II energy audit or any other comparable audit approved by the CMIT. In addition to energy 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-four, 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.

§ 19-1301. Benchmarking.

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

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

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

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

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

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

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

(a) Any building that is a government building.

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

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

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

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

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

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

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

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

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

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

2. Benchmarking required for covered buildings. The owner of a covered building shall annually benchmark such covered building no later than May first, two thousand twenty-five, and no later than every May first thereafter. Benchmarking of water use shall not be required unless the building was equipped with automatic meter reading equipment by the department 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.

a. Obligation to request and to report information. Where a unit or other space in a covered building, other than a dwelling unit, is occupied 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

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

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

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

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

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

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

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

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

a. the energy utilization index,

b. the water use per gross square foot,

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

d. a comparison of data across calendar years for any years such building was benchmarked. Information generated by the benchmarking tool for the two thousand twenty-four calendar year for covered buildings, and for the two thousand twenty-five calendar year for covered buildings whose primary use is residential, as determined by the department of taxation and finance, shall not be disclosed. Exception: Ratings generated by the benchmarking tool for a covered building that contains a data center, television studio, and/or trading floor that together exceed ten percent of the gross square footage of any such building shall not be disclosed until the department determines that the benchmarking tool can make adequate adjustments for such facilities. When the department determines that the benchmarking tool can make such adjustments, it shall report such determination to the governor, the speaker of the assembly and the temporary president of the senate. Until such

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

7. Report. No later than December thirty-first of two thousand twenty-six and two thousand twenty-seven, respectively, the department shall prepare, submit to the governor, the speaker of the assembly, the temporary president of the senate, and post on the internet a report reviewing and evaluating the administration and enforcement of this title and analyzing data obtained from the benchmarking tool. Such report shall contain information regarding:

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

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

c. compliance with the requirements of this title,

d. any administrative and legislative recommendations for strengthening the administration and enforcement of this title,

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

f. such other information and analyses as the department deems appropriate.

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

§ 4. This act shall take effect immediately.