

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:

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-eight,
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 eighteen--two thousand nineteen ("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 twenty-three, 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-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-

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

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

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

17 (iii) Provision of information prior to vacating a unit or other
18 space. Where such owner receives notice that such tenant intends to
19 vacate such unit or other space before reporting information in accord-
20 ance with this paragraph, such owner shall request information relating
21 to such tenant's energy use for any period of occupancy relevant to such
22 owner's obligation to benchmark. Any such tenant shall report such
23 information to the owner of such building prior to vacating such unit or
24 other space or, if such information is not available prior to vacating
25 such unit or other space, as soon as practicable thereafter, regardless
26 of whether such owner has requested information pursuant to this
27 section. Such information shall be reported in a form and manner deter-
28 mined by the department.

29 (iv) Continuing obligation to benchmark. The failure of any or all
30 tenants to report the information required by this paragraph to the
31 owner shall not relieve such owner of the obligation to benchmark pursu-
32 ant to this title, provided that such owner shall not be required to
33 benchmark such information reported by a tenant unless otherwise avail-
34 able to such owner.

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

46 c. Violations. It shall be unlawful for the owner of a covered build-
47 ing to fail to benchmark pursuant to this subdivision. The commissioner
48 shall classify such violation as a lesser violation.

49 3. Direct upload. Information shall be directly uploaded to the bench-
50 marking tool in accordance with the following:

51 a. Direct upload by a utility company or other source. The department
52 shall encourage and facilitate any utility company or any other source
53 authorized by the department to upload directly to the benchmarking
54 tool, as soon as practicable, information necessary to benchmark a
55 building. Where information is uploaded directly to the benchmarking
56 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 section.

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

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

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

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

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

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

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

39 a. the energy utilization index,

40 b. the water use per gross square foot,

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

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

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

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

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

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

15 c. compliance with the requirements of this title,

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

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

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

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

27 § 4. This act shall take effect immediately.