SENATE DOCKET, NO. 2114 FILED ON: 2/19/2021

SENATE . . . . . No. 2232

The Commonwealth of Massachusetts

PRESENTED BY:

Rebecca L. Rausch

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to better buildings.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Rebecca L. Rausch	*Norfolk, Bristol and Middlesex*	
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*2/24/2021*
Maria Duaime Robinson	*6th Middlesex*	*2/25/2021*
James B. Eldridge	*Middlesex and Worcester*	*3/1/2021*
David Henry Argosky LeBoeuf	*17th Worcester*	*7/14/2021*
Sonia Chang-Diaz	*Second Suffolk*	*12/8/2021*

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By Ms. Rausch, a petition (accompanied by bill, Senate, No. 2232) of Rebecca L. Rausch, Joanne M. Comerford, Maria Duaime Robinson and James B. Eldridge for legislation to establish building energy performance standards. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *2011* OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act relative to better buildings.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 25A of the General Laws is hereby amended by inserting after section 16 the following section:-

Section 17. (a) For the purposes of this section, the following words shall have the following meanings unless the context clearly requires otherwise:-

"Commercial building", a building or multiple buildings on a parcel of which not less than 50 per cent of the gross floor area, including hallways or other common space, but excluding parking, is used for commercial, retail, office, professional, educational or other nonresidential purposes, or any grouping of commercial buildings designated by the department as an appropriate reporting unit for the purposes of this section; provided, however, that

"commercial building" shall not include a building owned or leased by a municipal or state agency.

"Department," the department of energy resources.

"Energy", electricity, natural gas, steam, hot or chilled water, heating oil, propane or other products designated by the department used for heating, cooling, lighting, or water heating, or for powering or fueling other end uses.

"Energy performance rating or assessment score," a score assigned to a building based on how efficiently it uses energy relative to other buildings of the same type. The department may designate types of buildings based on factors including, but not limited to, classifications by region; status within a historic district established under chapter 40C and historic district commissions in the commonwealth established by a special act of the legislature; and size, occupancy, and use as defined by 780 CMR. The department shall promulgate regulations to establish the scoring system.

"Energy use benchmarking tool", the ENERGY STAR Portfolio Manager, an online energy use benchmarking tool used by the United States Environmental Protection Agency for reporting and managing the energy performance, water efficiency and greenhouse gas emissions of building, or a tool capable of: (i) performing all the functions relevant to compliance with this section; (ii) allowing for reporting by third parties, including, but not limited to, gas distribution and electric distribution companies; and (iii) exchanging information and data with the ENERGY STAR Portfolio Manager.

"Greenhouse gas," as defined in chapter 21N.

"Gross floor area", as defined in 780 CMR.

"Large building," a building that meets any of the following criteria: (1) buildings owned or leased by a municipality, state agency, or other government or quasi-government entity consisting of not less than 10,000 square feet of gross floor area; (2) as of January 1, 2022, residential or commercial buildings consisting of not less than 25,000 square feet of gross floor area; (3) as of January 1, 2025, residential or commercial buildings consisting of not less than 20,000 square feet of gross floor area; and (4) as of January 1, 2028, residential or commercial buildings consisting of not less than 15,000 square feet of gross floor area.

"Owner," the owner of record of a building, or a designated agent thereof, including, but not limited to, the association or organization of unit owners responsible for management in the case of a condominium, the board of directors in the case of a cooperative apartment corporation, and the net lessee in the case of a building subject to a net lease with a term of not less than 49 years, inclusive of all renewal options.

"Residential building", a building or multiple buildings on a parcel of which not less than 50 per cent of the gross floor area, including hallways and other common space serving residents, but excluding parking, is used for dwelling purposes, or any grouping of residential buildings designated by the department or a municipality as an appropriate reporting unit for the purposes of this chapter; provided, however, that "residential building" shall not include a building owned or leased by a municipal or state agency.

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

(b) For large buildings, the department shall undertake energy use benchmarking to determine whether each building utilizes more or less energy, and emits more or less greenhouse gases, than buildings of comparable size, occupancies and uses, and to inform a statewide analysis of energy use trends and opportunities to increase energy efficiency and reduce greenhouse gas emissions. To conduct the benchmarking, the department shall create, procure, or designate an energy use benchmarking tool and shall provide technical support and assistance on the use of the benchmarking tool to the owners of buildings subject to this section.

(c) (1) To administer this section, the department shall use building types and occupancies defined by 780 CMR. The department may designate subcategories within each building type and occupancy, and may establish different reporting requirements and energy performance standards for each subcategory. In establishing reporting requirements and energy performance standards, the department may consider whether tenant-occupied units or spaces are separately metered, and may consider classifications by region and classifications by status within a historic district established under chapter 40C or a historic district commission established by a special act of the legislature.

(2) Not later than May 1 of each year, beginning in 2022, the owner of each large building shall use the energy use benchmarking tool to accurately report to the department, or cause to be accurately reported to the department, the building's energy use for the previous calendar year and any other building characteristics determined by the department to be necessary to establish the absolute and relative energy use of the building. The owner of a building subject to this section may authorize a gas or electric distribution company or other third party to report building-specific data to the department, and the gas or electric distribution

company shall report building-specific data to the department upon such authorization; provided, however, that such authorization shall not relieve an owner from compliance with this section.

(3) Annually, an owner of a large building with separately-metered and tenant-occupied units or spaces shall request from each tenant of the building all information necessary to comply with the requirements of paragraph (2) and each tenant shall report the required information to the owner. The owner of a large building may bypass individual authorization and request the electric and gas distribution companies to provide the aggregate energy consumption of all meters in the building, including tenant-occupied units and separately-metered units, and the electric and gas distribution companies shall provide the data to the building owner, separated by month and consumption by source. Failure of an owner to report energy use information to the department shall not impose liability on a tenant.

(4) The department shall establish a deadline extension or hardship waiver process for owners who, in the judgment of the department, demonstrate cause for a deadline extension or hardship waiver.

(5) If an occupied building subject to the requirements of this section is transferred, the buyer shall make reasonable efforts to report energy use information for the building for the entire calendar year, if practicable.

(d) Annually, not later than October 1, the department shall make available on its website energy use information and data for the preceding calendar year for each large building, on a building-by-building basis. For each building, the information made available shall include, but not be limited to: (i) the address of the building and the municipality in which the building is located; (ii) the owner of the building; (iii) the building's total energy use in kBTU, total

greenhouse gas emissions in pounds of carbon dioxide equivalent, total square footage, energy intensity in kBTU per square foot and greenhouse gas emissions per square foot in pounds of carbon dioxide equivalent per square foot; (iv) the breakdown of the building's energy use by electricity, gas, steam and other sources; and (v) an energy performance rating or assessment score. The department shall utilize such practices as are necessary to prevent the public disclosure of personal information regarding owners and tenants, and maintain a quality assurance process to improve the accuracy and completeness of the available information. The department shall provide owners with the opportunity to submit contextual information related to energy use in their buildings and shall disclose such information on its website upon request by the owner. The website shall be made available in English and multiple other languages commonly spoken in the commonwealth.

(e) The department shall make available to a regional planning agency, municipality or other public agency requesting such information any data set forth in this section.

(f) The department shall prepare an annual comprehensive report on the energy performance of large buildings utilizing the information and data collected pursuant to this section. The report shall include, but not be limited to, an analysis of energy performance, greenhouse gas emissions, and energy sources by building size, occupancy, and use as defined by 780 CMR, as well as by region of the commonwealth. The report shall also include, when available, energy performance and greenhouse gas emissions over time. The report shall be posted on the department's website and filed with the house and senate committees on ways and means and the joint committee on telecommunication, utilities and energy not later than December 31.

(g) On the basis of the comprehensive reports prepared by the department pursuant to subsection (f) and other information and data as deemed necessary by the secretary of energy and environmental affairs, the secretary shall conduct an annual review of trends in the energy performance of large buildings and recommend changes to state laws, regulations, policies, and programs to achieve further energy reductions.

(h) The department shall ensure that electric distribution companies and municipal aggregators provide owners of buildings subject to this section with up-to-date information about energy efficiency opportunities or actions available to increase energy efficiency, including incentives in utility-administered or other energy efficiency programs and changes in energy assessment technology. The department shall prioritize those buildings that have not demonstrated year-to-year improvement in their energy performance rating or assessment score.

(i) (1) The department shall establish energy performance standards for each building type. The department shall establish these standards on the following schedule:

(i) buildings owned or leased by a municipality, state agency, or other government or quasi-government entity consisting of not less than 10,000 square feet of gross floor area, and residential or commercial buildings consisting of not less than 25,000 square feet of gross floor area: no later than December 31, 2023, and every 5 years thereafter;

(ii) residential or commercial buildings consisting of not less than 20,000 square feet of gross floor area: no later than December 31, 2026, and every 5 years thereafter; and

(ii) residential or commercial buildings consisting of not less than 15,000 square feet of gross floor area: no later than December 31, 2029, and every 5 years thereafter.

(2) The department shall establish reporting and data verification requirements for each 5-year compliance cycle. These standards shall apply only to large buildings.

(3) In developing energy performance standards, the department shall maximize opportunities for the commonwealth to achieve the requirements of chapter 21N of the General Laws, as well as other laws and policies related to global warming, pollution reduction, energy efficiency, and renewable energy.

(4) The department may establish campus-wide energy performance standards for post-secondary educational institutions and hospitals with multiple buildings in a single location that are owned by a single entity; provided, that the development of any standard by the department shall be based upon an analysis of the existing building efficiency of each campus and the compliance pathways shall achieve savings comparable to those outlined in paragraph 4 of this subsection.

(5) The department shall set energy performance standards that are at least as strong as the median energy performance rating or assessment score of large buildings of each building type.

(j) (1) For the initial 5 year compliance cycle, owners of large buildings with an energy performance rating or assessment score lower than the energy performance standard established by the department must satisfy one of the following compliance pathways: (i) an energy performance pathway, which shall require a building to demonstrate a decrease in normalized site energy use averaged over the last 2 years of the 5-year compliance cycle, as compared to the normalized site energy use averaged over the 2 years preceding the first year of the 5-year compliance cycle; or (ii) an emissions performance pathway, which shall require a building to

demonstrate a decrease in normalized site greenhouse gas emissions over the last 2 years of the 5-year compliance cycle, as compared to the normalized site greenhouse gas emissions averaged over the 2 years preceding the first year of the 5-year compliance cycle; provided, that switching from oil or another fuel to natural gas for space heating or water heating shall not count toward a building's compliance with this pathway. The department shall require large buildings subject to the requirements of this paragraph to reduce normalized site energy use or greenhouse gas emissions by at least 20 per cent over the initial 5-year compliance cycle, and may require greater reductions if the department finds that it is feasible to do so and will help achieve the commonwealth's greenhouse gas emissions limits under chapter 21N. The department must hold at least one public hearing before setting the required reduction in normalized site energy use or greenhouse gas emissions over the initial 5-year compliance cycle.

(2) For subsequent 5 year compliance cycles, the department shall establish energy performance standards and compliance pathways designed to achieve emissions and energy reduction targets; provided, that the compliance pathways shall maximize the potential to reduce greenhouse gas emissions from large buildings by at least 80 per cent by 2040, compared to the baseline level of emissions in 2022, and to achieve the commonwealth's greenhouse gas emissions limits under chapter 21N.

(k) The department shall establish exemption criteria for large buildings to delay compliance with the energy performance standards for up to 3 years if the owner demonstrates, to the satisfaction of the department, financial distress, change of ownership, vacancy, major renovation, pending demolition, or other acceptable circumstances determined by the department by regulation.

(l) The department shall coordinate with utility companies and the department of public utilities to establish incentive and financial assistance programs for owners to meet energy performance standards.

(m) (1) Municipalities may establish and enforce energy use benchmarking programs or energy performance standards for buildings, in lieu of the programs and standards established by the department; provided, that the following conditions are met: (i) The municipality uses an energy use benchmarking tool that collects information similar to the energy use benchmarking tool used by the state; (ii) Annually, not later than July 1, the municipality collects and forwards to the department, on a building-by-building basis, the required energy use information from the previous calendar year, using standardized units of measure and formats established by the department; and (iii) Energy performance standards established by the municipality result in reductions in energy use and greenhouse gas emissions that are comparable to or greater than the standards established by the department. Municipalities may set lower gross floor area thresholds for buildings subject to their programs and standards.

(2) The department shall review requests from municipalities to establish their own programs, and the department may deny requests if it is not satisfied that the above conditions are met. The department shall evaluate any municipal programs established under this subsection at least once every 5 years, and may withdraw its approval if municipal programs fail to comply with the above conditions.

(3) The department shall include data from all municipalities, including municipalities with their own energy use benchmarking programs or energy performance standards, in the

website designated in subsection (d), in the report required under subsection (f), and in the review required under subsection (g).

(n) (1) Owners of large buildings may pay an alternative compliance payment if their buildings fail to satisfy one of the compliance pathways established in subsection (j). The amount of the alternative compliance payment shall be set by the department and shall be assessed per metric ton of carbon dioxide equivalent emissions, as defined in chapter 21N, by which the building falls short of meeting the requirements of subsection (j). The alternative compliance payment shall be no less than $225 per metric ton of carbon dioxide equivalent emissions, and shall be set at an amount ensuring that it is more cost-effective for the owners of the vast majority of large buildings to make the improvements necessary to meet the compliance pathways rather than pay the alternative compliance payment. The department shall revise the amount of the alternative compliance payment at least once every 5 years. The alternative compliance payment shall be assessed in the final year of the 5-year compliance period and in every subsequent year that a building fails to satisfy one of the compliance pathways.

(2) Owners of large buildings failing to comply with the energy use reporting and benchmarking requirements of this section or knowingly providing false or incomplete information to the department shall be subject to a fine. Owners of large buildings failing to satisfy one of the compliance pathways established in subsection (j) who do not pay an alternative compliance payment to the department, as described in paragraph (1) of this subsection, shall also be subject to a fine. Fines shall be determined by the department and shall be assessed per day that a building owner is not in compliance with the requirements of this section. Fines shall be no less than $500 per day of noncompliance for buildings consisting of not less than 25,000 square feet of gross floor area, $350 per day of noncompliance for buildings

consisting of not less than 20,000 and not greater than 24,999 square feet of gross floor area, and $200 per day of noncompliance for buildings consisting of less than 20,000 square feet of gross floor area. The department may set different levels of fines for different violations of this section.

(3) Alternative compliance payments and fines collected by the department shall be deposited into a separate account established by the department. Any funds collected shall be used first to pay for the costs incurred by the department in administering this section, and any remaining funds shall be used to further the objectives of this section, including deep energy retrofits of low income and moderate income housing.

(4) The department shall take all reasonable steps to inform the owners of large buildings of their obligations under this section.

(o) In municipalities that establish their own energy use benchmarking programs or energy performance standards, the municipality and not the department shall assess any alternative compliance payments or fines. Alternative compliance payments and fines assessed by municipalities shall be no less than those described under subsection (n). Funds collected through alternative compliance payments and fines assessed by a municipality shall be retained by the municipality.