HOUSE DOCKET, NO. 2039 FILED ON: 1/20/2011

HOUSE . . . . . No. 2610

The Commonwealth of Massachusetts

PRESENTED BY:

Brian S. Dempsey

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 further regulating the provision of electricity and other services in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Brian S. Dempsey	*3rd Essex*

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HOUSE . . . . . No. 2610

By Mr. Dempsey of Haverhill, a petition (accompanied by bill, House, No. 2610) of Brian S. Dempsey for legislation to further regulate the costs imposed on tenants for heating and air conditioning. Telecommunications, Utilities and Energy.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *3622* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act further regulating the provision of electricity and other services in the Commonwealth.

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

SECTION 1. Section 335 of Chapter 164 of the Acts of 1997 is hereby amended by striking in line 2 the following words "installed prior to July 1 1997".

SECTION 2. Said section 335 is hereby further amended by inserting at the end thereof the following new paragraphs:—

(A) As used herein the following words shall have the following meanings:— "Energy Monitoring Equipment" means a measuring device or other equipment used to determine energy use. "Energy Monitoring System" means a method of determining the energy use consumed within a dwelling unit with the use of a measuring device. "Measuring Device" means a device used in an energy monitoring system that monitors operating time of energy monitoring equipment.

11 (B) A dwelling unit shall become eligible for the imposition on the tenant of a charge for
12 the cost of heat or air conditioning only upon the commencement of a new tenancy in such
13 dwelling unit and only if:—

14 (1) the dwelling unit is being occupied for the first time; or

15 (2) the previous tenant vacated the dwelling unit voluntarily or was evicted from the
16 dwelling unit for nonpayment of rent or for breach of lease or noncompliance with a rental
17 agreement for the dwelling unit; provided however that once a tenant of a dwelling unit has been
18 charged for the use of heat or air conditioning in accordance with this section such dwelling unit
19 shall remain eligible for the imposition of a charge for the use of heat or air conditioning in all
20 subsequent tenancies.

21 (C) The landlord/owner must provide the tenants and prospective tenants with:—

22 (a) the formula for deriving the costs;

23 (b) the actual bill per unit of energy from the utility/vendor;

24 (c) total utility costs as well as costs for individual units and common areas within five
25 days of a written request to the landlord/owner;

26 (d) the utility costs for each month of the most recent year.

27 (D) The measuring device must meet the accuracy standards for timing devices as set
28 forth in section 5.55 “Timing Devices” of Handbook of the National Instituted of Standards and
29 Testing (NIST).

30 (E) The landlord/owner is not permitted to make a profit nor charge any fees related to
31 any utility billing. Total charges to the tenants for heat or air conditioning use shall not exceed
32 seventy five percent (75%) of the landlord's charges in any month.

33 (F) The tenant may seek dispute resolution regarding billing overcharges meter or energy
34 monitoring system accuracy with the Department of Public Utilities.

35 (G) Tenants may not be evicted for nonpayment of utility bills. Nonpayment will
36 constitute a material breach of lease and the tenants may seek a remedy or cure prior to a court
37 hearing.

38 (H) Any payment on a bill rendered to a tenant in accordance with this section shall not
39 be considered late unless payment is received by the property owner or agent 15 days or more
40 after receipt of the bill by the tenant; provided that if the property owner or agent renders bills
41 less frequently than monthly payment shall not be deemed late unless received by the owner or
42 agent more than 30 days after receipt of the billl by the tenant. Notwithstanding the foregoing the
43 landlord may impose a $5.00 late fee for any payment that is considered late.

44 (I) An owner may not charge the tenant of a dwelling unit separately for heat or air
45 conditioning measured by an energy monitoring system unless the system measures only heat or
46 air conditioning that is supplied for the exclusive use of the particular dwelling unit and only to
47 an area within the exclusive possession and control of the tenant of such dwelling unit and does
48 not measure any heat or air conditioning usage for any portion of the common areas or by any
49 other party or dwelling unit.

50 (J) The property owner shall not in any manner charge or collect fees from tenants that
51 are intended to compensate the owner for the costs of purchasing, installing or maintaining the

52 energy monitoring system or any related costs of taking readings from the system and rendering
53 bills. To ensure compliance with this requirement the property owner shall provide upon the
54 request of any tenant any and all records that are necessary to demonstrate that the aggregate
55 amount billed to all tenants through use of the energy monitoring does not exceed seventy five
56 percent (75%) of the amount billed by the utility company or energy supplier to the owner for
57 such space in the building that is exclusively occupied by the tenants.

58 (K) An owner may not charge the tenant separately nor allow tenant to be charged
59 separately for allocated heat or air conditioning usage unless the tenant has signed a written
60 rental agreement that clearly and conspicuously provides for such separate charge and that fully
61 discloses in plain language the details of the energy monitoring system and billing arrangement
62 between the owner and the tenant. Each bill for separately allocated heat or air conditioning
63 usage shall clearly set forth all charges and all other relevant information including but not
64 limited to the current and immediately preceding monitoring system readings and the date of
65 each such reading the amount of heat or air conditioning consumed since the last reading the
66 charge per unit of heat or air conditioning the total charge and the payment due date.

67 (L) An owner shall allocate the cost of heat to each individual dwelling unit by measuring
68 run time of the energy system in question. For hot water baseboard heating systems the
69 measuring device must also monitor temperature to verify that the water in each unit exceeds a
70 minimum temperature appropriate for that heating system (this requirement does not apply to
71 any system installed prior to January 2008). This temperature monitoring shall be used as an
72 additional quality control check in the billing process to ensure that the tenant is using the energy
73 system when the measuring device so indicates.

74 (M) The energy monitoring system utilized shall be based on the amount of minutes each
75 unit used based on the measuring device. Only the following additional factors may be utilized in
76 the energy monitoring system:— BTU ratings of applicable energy devices, length of baseboard
77 in each unit and temperature of relevant devices. No portion of the energy monitoring system can
78 be based on any other factor including but not limited to the number of occupants in each unit or
79 the size of each unit.

80 (N) An owner may not shut off or refuse to provide heat to a tenant on the basis that the
81 tenant has not paid a separately allocated heat charge.

82 (O) The owner shall maintain in good working order the heating system to each dwelling
83 unit and any component thereof including any energy monitoring system installed pursuant to
84 this section and to respond in a timely manner to any request by the tenant for the repair of any
85 defect or malfunctioning in such heating system. In the event of any over-charge by the landlord
86 or any violation of the state sanitary code the tenant shall have all rights and remedies provided
87 under law for such overcharges or such violations including but not limited to the rights and
88 remedies provided under Chapters 111 186 and 239.

89 (P) No charge under this section may be imposed on any tenant residing in public
90 housing.

91 (Q) A dwelling unit eligible for Low Income Home Energy Assistance (LIHEAP) is not
92 eligible for the imposition of a charge for the cost of heat or air conditioning pursuant to this
93 section.

94 (R) The department of public utilities and the department of public health shall

95 promulgate such additional regulations as it determines to be necessary to implement this

96 section.

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