

Building Energy Performance Disclosure and Improvement Act*

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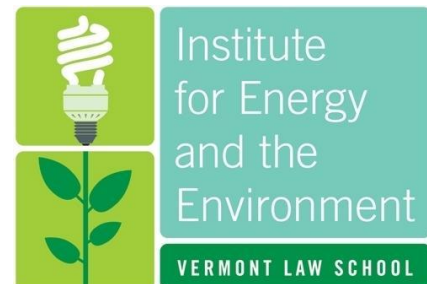
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* *The work of the IEE Research Team is intended to assist and expedite professional assessment. It does not purport to be, and is not the equivalent of, the work of a licensed professional with expertise in this area. Before making significant decisions based on this work, it would be appropriate to consider consultation with a licensed professional with expertise in this field.*



Title XX, Building Energy Performance Disclosure and Improvement Act.

Chapter 1: General

Sec. 1. Short Title

This Title may be cited as the [state] Energy Efficient Buildings Act.

Sec. 2. Statement of Findings

The [Legislature] finds that:

(a) To meet their energy needs, buildings rely principally on fossil fuels, the combustion of which is the primary source of atmospheric greenhouse gases that are the principal cause of climate change.

(b) Increasing the energy efficiency of new and existing buildings has been shown to be an effective tool in decreasing total energy consumption.

(c) Consumers do not have sufficient access to information regarding energy performance in commercial and residential buildings.

(d) Increased dissemination of information concerning building energy consumption will allow consumers to assess the need for improving energy efficiency in existing buildings accurately.

(e) Publicly listing ratings of commercial buildings may encourage businesses to increase the efficiency of their properties because consumers and the general public will know how environmentally conscious the company behaves.

(f) The most significant improvements to [state's] overall energy efficiency can be achieved through requiring upgrades in energy performance for existing buildings.

(g) Requiring upgrades in energy performance for new and existing buildings will significantly reduce the consumption of energy in both residential and commercial buildings.

Sec. 3. Purpose

(a) The purpose of this Title is to improve the energy efficiency of new and existing buildings by

(1) assuring that purchasers and lessors of buildings are fully informed of the energy performance of the existing buildings they are purchasing or leasing, and

(2) establishing realistic and appropriate standards for the minimum energy performance of new and existing buildings

(b) The provisions of this Title shall not be construed in a manner that is inconsistent with federal law, nor does this Title abridge or modify any otherwise applicable law concerning health and safety with respect to the construction, renovation or occupation of buildings.

Sec. 4. Scope

(a) This Title applies to all new or existing buildings, except:

(1) Industrial buildings.

(2) Any building protected under the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc, *et. seq.*

(3) Any historic building or landmark as designated on the National Register of Historic Places or [the state listing of protected historic buildings or landmarks].

(4) Any building that is below 600 square feet in usable surface area.

(5) Any low energy use building, as defined in Section 5(a)(15) of this Chapter.

(6) Any transfer of real property or the right to possess real property by virtue of (i) inheritance, (ii) involuntary transfer of title

resulting from default on an obligation secured by real property, (iii) change of title pursuant to marriage or divorce, (iv) condemnation, or (v) gift.

Sec. 5. Definitions

(a) For the purpose of this Title:

(1) “Asset rating” means the building energy use rating generated by modeling under standardized weather and occupancy conditions, adjusted to account for personal variances in energy consumption.

(2) “Building” means any enclosed structure created for permanent use as a residence, a place of business, or any other activities whether commercial or noncommercial in character.

(3) “Building envelope” means the exterior of a structure, including but not limited to the foundation, roof, walls, windows, doors, and attic spaces.

(4) “Commercial building” means a structure of which more than 50 percent of usable square footage is used or intended for use in connection with (i) the exchange, sale, or storage of goods, or (ii) the provision of services. (iii) A residential building with more than five dwelling units is a commercial building for purposes of this Title.

(5) “Central registry” means the web-based database created and maintained by [State Agency] for the purposes of enforcing this Title and making consumer energy use data accessible to authorized energy auditors for the purpose of completing building ratings and audits. This database shall be secure for the purposes of protecting consumer information confidentiality.

(6) “Commercial unit” means that part of a commercial building which is occupied by or intended for occupation by an individual owner or tenant.

(7) “End use application” means the final energy consumption in a building categorized by space heating, water heating, air conditioning, major appliances, electronics, and lighting.

(8) “Energy audit” means an in-home technical review of building energy performance completed by a certified professional, as required in Chapter 2 this Title.

(9) “Energy auditor” means a professional certified to conduct an in-home technical review of building energy performance under Chapter 4 of this Title.

(10) “Energy usage data” means information held by the electric or gas utility related to customer demand measured by kWh, BTU,

or the appropriate energy unit recorded by the utility.

(11) “Greenhouse gas rating” means estimation of a building’s impact on the environment based on its energy consumption and type of fuel consumed.

(12) “Industrial building” means a structure, irrespective of square footage, in which 75% or more of the building energy consumption is used for the production, manufacture, assembly, or processing of goods.

(13) “Lease” means the entering into an agreement to transfer the right to occupy or to use a building for a specified time, other than via a sale.

(14) “Local code enforcement official” means the municipal or county official(s) responsible for administering and enforcing the jurisdiction’s building code and/or a proposed building construction or renovation’s compliance with municipal or county zoning, planning, health and land use laws.

(15) “Low energy use building” means any building that (i) has a peak design rate of energy usage less than 3.4 Btu/h·ft² (10.7 W/m²) or 1.0 watt/ft² (10.7 W/m²) of floor area for space conditioning purposes, or (ii) does not contain conditioned space.

(16) “Non-compliance listing” means a list, as generated by the [State Agency] from the central registry, of all commercial and residential properties located within a respective local code enforcement jurisdiction that have not been in compliance with this Title for a minimum period of 12 months.

(17) “Notice of violation” means a notice sent by the local code enforcement official to the commercial or residential property owner within its code enforcement jurisdiction which states that the property is in non-compliance with this Title and which commences enforcement action under Chapter 4, Sec. 2 herein.

(18) “Operational rating” means a building energy use rating generated by measuring actual energy consumption on an annual basis, taking into consideration all physical systems and their operation.

(19) “Physical systems” means any energy consuming equipment integrated in the building design, function or operation.

(20) “Residential building” means a structure that contains four or fewer residential units, provided that at least 50

percent of the floor space of the building is comprised of such residential unit or units.

(21) “Residential unit” means a separately enclosed space that meets or is intended to meet the living needs of one or more individuals.

(22) “Sale” means the entering into a contractual obligation to transfer all or any part of the ownership of a building, regardless of whether the contract is subsequently breached, modified or performed.

(23) “Standardized weather and occupancy conditions” means building energy consumption under average climate conditions for the geographic area and average per capita consumption as to remove for personal variances in household energy use.

(24) “Statement of energy performance” means the final disclosure statement including all aggregated building energy performance information as required by this Title.

(25) “Technical scale” means a building energy rating according to predetermined categories and region specific building characteristics.

Chapter 2: Mandatory Disclosure of Energy Performance

Sec. 1. Mandatory Disclosures for Residential Buildings

(a) Prior to the sale of any interest in real property which includes a residential building, the seller shall provide a statement of energy performance to the buyer. The buyer shall acknowledge receipt of such statement by signing a copy of the statement.

(b) Prior to the lease of any residential unit, whether orally or in writing, the lessor shall provide a statement of energy performance to the lessee. The lessee shall acknowledge the receipt of such statement by signing a copy of the statement.

(c) When an interest in real property or a residential unit subject to the requirements of this section is offered for sale or lease, the seller or seller's agent shall (1) prepare the statement of energy performance prior to advertising the property or residential unit, (2) inform all prospective buyers or lessors of their right to obtain the statement, and (3) provide a copy of the statement to any prospective buyer or lessor so requesting.

(d) A statement of energy performance prepared pursuant to this section shall include a standardized valuation of the

energy use of the relevant building or residential unit sufficient to allow prospective purchasers or lessees to compare and assess the energy performance of that building or residential unit to others. The [State Agency] shall by rule develop a standardized rating system to be used in statements of energy performance.

(e) Such rating system shall be consistent with the methods approved by the [State Energy Department] or in accordance with United States Department of Energy, National Building Rating Program. Such rating system shall at minimum consist of the following:

(1) A numerical score symbolic of the overall energy performance under standardized weather and occupancy conditions. This score must be calculated utilizing asset rating methodology, as defined in Chapter 1, Sec. 5 herein.

(2) In computing such asset rating, the building characteristics must be analyzed in accordance with a technical scale, as defined in Chapter 1, Sec. 5 herein.

(3) Such asset rating shall include total building energy consumption and a greenhouse gas rating.

(i) Total building energy consumption must be measured in aggregate consumption of each end-use application.

(ii) A greenhouse gas rating will estimate the amount of carbon dioxide emissions per housing unit, as a calculation of the carbon intensity for each fuel source used in the unit. The rating should be calculated by aggregating the following estimations:

(A) 1.5 lbs CO₂ / kWh of electricity consumed annually.

(B) 0.12 lbs CO₂ / cubic feet of natural gas consumed annually.

(C) 22.29 lbs CO₂ / gallon of fuel oil consumed annually.

(f) A statement of energy performance prepared pursuant to this section shall include a written report of the results of an on-site energy audit. Such energy audit must be completed by a person qualified to perform such audits, as certified by the [State Agency]. Such energy audit shall include a comprehensive household inspection to assess air and energy leakage and propose cost effective improvements. The energy audit shall test the building envelope, insulation, ventilation, water heating system, space heating and cooling systems, appliances, and lighting. The [State Agency] shall by regulation develop

standardized requirements for audits completed pursuant to this section.

(g) The [State Agency] shall adopt regulations, within 6 months of the effective date of this Title, providing for the certification of energy auditors to perform in-home technical reviews of building energy performance. To obtain certification, energy auditors shall be qualified to perform a comprehensive household inspection to assess air and energy leakage and propose cost effective improvements. Energy auditors shall be qualified to test the building envelope, insulation, ventilation, water heating system, space heating and cooling systems, appliances, and lighting.

(h) To facilitate complete and accurate compliance with the requirements of this section, the [State Agency] shall require all electric and gas utilities within its jurisdiction to upload customer energy usage data to a secure central registry. Such central registry shall be maintained by the [State Agency]. Access to information contained on the central registry shall be granted only to energy auditors, [State Agency] employees, local code enforcement officials, persons authorized to enforce this Title, or to entities providing essential

energy efficiency services as determined by the [State Agency].

(1) The [State Agency] shall by rule develop privacy guidelines to protect consumer confidentiality.

(2) Consumer data shall in no instances include payment history or billing dollar amounts.

Sec. 2. Mandatory Disclosure in

Commercial Buildings

(a) Prior to the sale of any interest in real property which includes commercial buildings, the seller shall provide a statement of energy performance to the buyer. The buyer shall acknowledge receipt of such statement by signing a copy of the statement.

(b) Prior to the lease of any commercial unit, whether orally or in writing, the lessor shall provide a statement of energy performance to the lessee. The lessee shall acknowledge receipt of such statement by signing a copy of the statement.

(c) When an interest in real property or a commercial unit subject to the requirements of this section is offered for sale or lease, the seller or authorized agent thereof shall (1) prepare the statement of energy performance prior to advertising the property or

residential unit, (2) inform all prospective buyers or lessors of their right to obtain the statement, and (3) provide a copy of the statement to any prospective buyer or lessor so requiring.

(d) A statement of energy performance prepared pursuant to this section shall be completed in accordance with all requirements identified in Chapter 2, Sec. 1 herein.

(e) All commercial building owners must regularly obtain and disclose their building energy performance. The [State Agency] shall by rule develop an implementation plan for such scheduled disclosure of commercial building energy performance. The [State Agency] may consider phased implementation of scheduled disclosure through building size or through initial application in public buildings. This implementation plan must at minimum accomplish the following:

(1) The [State Agency] must adopt regulations providing for such schedule within one year of the enactment of this Title.

(2) All commercial buildings must be in initial compliance within three years of the adoption of such regulations. Initial compliance may be fulfilled by completing

disclosure under Chapter 2, Sec. 2 (a) or Chapter 2, Sec. 2 (b) herein.

(3) The period between each scheduled disclosure following initial compliance must not exceed six years.

(f) A statement of energy performance prepared pursuant to Chapter 2, Sec. 2 (e) herein

shall include a measurement of building energy consumption to encourage building operators to monitor and improve energy performance. The [State Agency] shall by rule develop a standardized rating system to be used in accordance with scheduled disclosure.

(g) Such rating system shall be developed with methods as approved by the [State Energy Department]. This rating system shall at minimum consist of the following:

(1) A numerical score symbolic of the overall energy performance under standardized weather conditions. This score must be calculated utilizing operational rating methods, as defined in Chapter 1, Sec. 5 herein.

(2) A greenhouse gas rating as calculated in accordance with Chapter 2, Sec. 1 (b)(3)(ii) herein.

(h) The results of all scheduled disclosures completed pursuant to Chapter 2, Sec. 2(e) herein must be made available on a publically accessible database. The [State Agency] shall, by rule, establish this database on an appropriate domain for public access, and require the regular management of such database.

(i) For the purposes of completing required disclosures under Chapter 2, Sec. 2 (a), (b), or (e) herein, the [State Agency] shall require all electric and gas utilities within its jurisdiction to upload customer energy usage data to the central registry. Access to information contained on the central registry shall be granted only to energy auditors, [State Agency] employees, local code enforcement officials, persons authorized to enforce this Title, or to entities providing essential energy efficiency services as determined by the [State Agency].

(1) The [State Agency] shall by regulation adopt privacy guidelines to protect consumer confidentiality.

(2) Consumer data available on the central registry shall in no instance include payment history or billing dollar amounts.

Chapter 3: Mandatory Upgrades in Building Efficiency

Sec. 1. Mandatory Upgrades in Residential Buildings

(a) If a statement of energy performance completed pursuant to Chapter 2, Sec. 1 of this title reveals an energy rating below acceptable standards, as determined by the [State Agency], such building will be subject to the mandatory upgrade requirements of this Chapter.

(1) Required upgrades in all residential buildings shall be the responsibility of the buyer or lessee of the building.

(2) Responsibilities for Required upgrades in all commercial buildings may be negotiated between parties. In the case of no negotiated agreements, upgrades shall be the responsibility of the buyer or lessee.

(3) All required upgrades must begin installation, retrofitting, or renovation within XX months of the completed sale.

(b) Any renovation of an existing building which encompasses an alteration or addition to 25% or more of the building envelope or a cost greater than 20% the value of the

building must be completed in accordance with the most recently adopted International Energy Conservation Code (IECC).

Sec. 2. Technical Standards

(a) The [State Agency] shall, in cooperation with the appropriate board responsible for building codes, by rule develop technical energy efficiency standards applicable to all existing buildings under this Title.

(1) The [State Agency] may consider any pre-existing state building codes pertaining to energy efficiency or energy conservation for new construction in developing these standards.

(2) The [State Agency] should consider standards which promote optimal energy savings and are technically, functionally, and economically feasible.

(b) Where applicable, the [State Agency] should incorporate voluntary incentives available for energy efficiency and weatherization upgrades.

Chapter 4: Enforcement

Sec. 1. Non-Compliance Listing.

(a) [State Agency] and local code enforcement officials shall access the central registry under Chapter 2, Sec. 1(g) and Chapter 2, Sec. 2(i) herein to monitor and enforce commercial and residential building compliance with the provisions of this Title.

(b) [State Agency] shall adopt regulations, within 12 months of the effective date of this Title, requiring the [State Agency] to access the central registry and annually provide local code enforcement officials with a non-compliance listing of all commercial and residential properties located within respective local code enforcement jurisdictions that have not been in compliance with this Title for a minimum period of 12 months. This non-compliance listing shall at minimum contain the following information:

(1) A description and address of the properties in non-compliance, the nature and date of the non-compliance for each property, and the date the central registry was consulted to compile the non-compliance listing.

(2) The contact information of the [State Agency] official or employee who issued the

non-compliance listing and a statement that this [State Agency] official or employee will be available to answer any local code enforcement inquiries concerning the non-compliance listing.

(3) A statement that the local code enforcement official is required to issue a notice of violation for all properties listed in the non-compliance listing within 6 months of receipt.

(4) A statement that local code enforcement official failure to enforce the provisions of this Title will (i) prohibit the local code enforcement jurisdiction from receiving any state funding for building efficiency improvements for a 10 year period and (ii) the local code enforcement jurisdiction shall indemnify the [State Agency] for the costs of enforcement of the provisions of this Title undertaken by the [State Agency] in absence of local code enforcement under the provisions of this Title.

(c) A local code enforcement official has failed to enforce the provisions of this Title, for purposes of Sec. 1 (b) (4) of this Chapter, in any one of the following circumstances:

(1) Failure to issue notices of violation for all properties in a non-compliance listing within the required 6 month period for 2 consecutive years.

(2) Failure to update the central registry for equal to or greater than 20 percent of the residential and commercial properties in a non-compliance listing, within 6 months of the local code enforcement official's issuance of notices of violation for these properties. A central registry update shall only have been made for purposes of this subsection if (i) the property in the non-compliance listing, or the local code enforcement official's independently compiled listing of non-compliant properties, is exempt from this Title under Chapter 1, Sec. 4, (ii) the property is now in compliance with this Title and all outstanding penalties have been paid, or (iii) the enforcement action is now before the [State Agency] under Sec. 4 of this Chapter, on administrative appeal to the local code enforcement jurisdiction, or before a judicial court of competent jurisdiction.

(d) [State Agency] shall provide local code enforcement officials with the first non-compliance listing within 36 months of the effective date of this Title, or within 24 months of the [State Agency's] adoption of

regulations pursuant to Sec. 1 (b) of this Chapter, whichever is earlier. Upon the [State Agency's] provision of each local code enforcement official with the first non-compliance listing, the State Agency shall provide updated non-compliance listings from the central registry to local code enforcement officials annually.

Sec. 2. Local Enforcement.

(a) Within 6 months' receipt of a non-compliance listing from the [State Agency], or within 6 months of the local code enforcement official's independent compilation of a listing of all non-compliant properties, within the local code enforcement official's jurisdiction, from the central registry, the local code enforcement official shall issue a notice of violation to all owners of properties on the non-compliance listing or the local code enforcement officials independently compiled listing of non-compliant properties. The notice of violation shall at minimum contain the following information:

(1) The nature and date of the property's non-compliance.

(2) The penalties for non-compliance under Sec. 3 of this Chapter.

(3) A statement that the property owner has the right to submit information demonstrating compliance with this Title within 30 days' receipt of the notice of violation, and that the local code enforcement official, within 30 days' receipt of this information, must either (i) reissue or amend the notice of violation or (ii) notify the property owner that additional information is needed for the local code enforcement official to determine the property owner's compliance with this Title, which the property owner is required to submit within 30 days.

(4) The process for administrative appeals of building code violations in the local code enforcement jurisdiction, if any, provided that the property owner has first submitted information pertaining to compliance with this Title under Sec. 2 (a) (3) of this Chapter, or a statement of the right for the property owner to seek judicial redress if no administrative appeals of building code violations exist in the local code enforcement jurisdiction.

(b) A municipal and/or a county planning board, zoning board of appeals, design commission, or any other local or county agency with full or partial jurisdiction over the site plan for any activity on a parcel that

contains or is planned to contain a residential or commercial building subject to this Title, irrespective of whether the activity giving rise to site plan jurisdiction involves the construction of a new building or the renovation of an existing building, cannot grant site plan approval over that activity unless the buildings located or planned to be located on that parcel are demonstrated to be in compliance with this Title.

(c) The local code enforcement jurisdiction shall not grant a building permit for any construction of a new residential or commercial building, or for any renovation to existing residential or commercial buildings, including minor renovations, unless the plans for the new building construction or renovation are demonstrated to be in compliance with this Title.

(d) All municipal or county agencies with environmental review responsibilities for an activity subject to [the State's] environmental impact review statute, where that activity subject to environmental review involves the construction of a new residential or commercial building, or the renovation of an existing residential or commercial building, are required to assess the building's compliance with this Title,

and are required to find the environmental impact of the building's non-compliance with this Title to be significant.

Sec. 3. Penalties.

(a) The local code enforcement official shall not assess a penalty under this Title to any property owner who, within 12 months' receipt of a notice of violation, has demonstrated compliance with this Title.

(b) The local code enforcement official shall assess a penalty under this Chapter of \$1,000 to any seller or lessor of interest in real property who, more than 12 months after receipt of a notice of violation, has failed to demonstrate compliance with this Title and does not have a pending administrative or judicial appeal of the notice of violation.

(c) The local code enforcement official, for any seller or lessor of interest in real property who, more than 24 months after receipt of a notice of violation, has failed to demonstrate compliance with this Title and does not have a pending administrative or judicial appeal of the notice of violation, shall assess a penalty under this Chapter of \$2,500.

(d) The local code enforcement official, for any property which remains in non-

compliance after 24 months, shall place a lien on the property prohibiting its sale until the fine has been paid and compliance with this Title has been demonstrated.

(e) The local code enforcement officer shall not enter into any settlement or consent order that reduces the penalties for non-compliance under this section, nor shall the local code enforcement officer allow any non-compliant residential or commercial building owner under local code enforcement officer jurisdiction to settle a notice of violation other than by full compliance with this Title.

Sec. 4. [State Agency] Enforcement.

(a) The [State Agency] may commence enforcement action against any property owner on any non-compliance list by providing the local code enforcement official with 30 days' notice of the [State Agency's] commencement of enforcement action, except that 30 days' notice to the local government official is not required if the [State Agency] states, on the non-compliance list, that it will enforce this Title against a property owner whose building appears on the non-compliance list for the first time.

(b) Upon receipt of 30 days' notice that the [State Agency] will commence enforcement action, the local code enforcement officer may request, before the expiration of the 30 day notice period, to take enforcement action without [State Agency] involvement. The [State Agency] shall inform the local code enforcement officer within 15 days of whether the request will, in its discretion, be granted.

(c) No notice to the local enforcement official is required if the [State Agency] commences an enforcement action because

of the local code enforcement jurisdiction's failure to enforce this Title.

(d) Local code enforcement official failure to enforce the provisions of this Title, pursuant to Sec. 1 (c) of this Chapter, will (i) prohibit the local code enforcement jurisdiction from receiving any state funding for building efficiency improvements for a 10 year period and (ii) the local code enforcement jurisdiction shall indemnify the [State Agency] for the costs of enforcement of the provisions of this Title.