

HOUSE No. 02610

The Commonwealth of Massachusetts

PRESENTED BY:

Brian 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 passage of the accompanying bill:

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

PETITION OF:

NAME:

Brian Dempsey

DISTRICT/ADDRESS:

3rd Essex

HOUSE No. 02610

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

Joint Committee on 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:

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

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

5 (A) As used herein the following words shall have the following meanings:— “Energy
6 Monitoring Equipment” means a measuring device or other equipment used to determine energy
7 use. “Energy Monitoring System” means a method of determining the energy use consumed
8 within a dwelling unit with the use of a measuring device. “Measuring Device” means a device

9 used in an energy monitoring system that monitors operating time of energy monitoring
10 equipment.

11 (B) A dwelling unit shall become eligible for the imposition on the tenant of a charge for the cost
12 of heat or air conditioning only upon the commencement of a new tenancy in such dwelling unit
13 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 dwelling
16 unit for nonpayment of rent or for breach of lease or noncompliance with a rental agreement for
17 the dwelling unit; provided however that once a tenant of a dwelling unit has been charged for
18 the use of heat or air conditioning in accordance with this section such dwelling unit shall remain
19 eligible for the imposition of a charge for the use of heat or air conditioning in all subsequent
20 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 days of a
25 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 forth in
28 section 5.55 “Timing Devices” of Handbook of the National Instituted of Standards and Testing
29 (NIST).

30 (E) The landlord/owner is not permitted to make a profit nor charge any fees related to any utility
31 billing. Total charges to the tenants for heat or air conditioning use shall not exceed seventy five
32 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 constitute a
36 material breach of lease and the tenants may seek a remedy or cure prior to a court hearing.

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

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

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

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

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

71 quality control check in the billing process to ensure that the tenant is using the energy system
72 when the measuring device so indicates.

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

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

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

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

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

91 (R) The department of public utilities and the department of public health shall promulgate such
92 additional regulations as it determines to be necessary to implement this section.

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