

# HOUSE . . . . . No. 04227

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## The Commonwealth of Massachusetts

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HOUSE, June 15, 2012

The committee on Telecommunications, Utilities and Energy to whom was referred the 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, reports recommending that the accompanying bill (House, No. 4227) ought to pass.

For the committee,  
 JOHN D. KEENAN.

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JOHN D. KEENAN.

The Commonwealth of Massachusetts

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**In the Year Two Thousand Twelve**  
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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. Section 1F of chapter 164 is hereby amended by inserting at the end thereof the  
4 following new paragraphs:—

5 (10)(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 (i) the dwelling unit is being occupied for the first time; or

15 (ii) 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 (iii) The department of public utilities approves the energy monitoring system upon a  
22 demonstration by the owner that the system results in a reasonable determination of the cost of  
23 energy use within a dwelling unit.

24 (iv) The owner completes a home energy assessment for each dwelling unit and installs all  
25 reasonable cost-effective items recommended by the home energy assessor. The department  
26 may develop a minimum energy efficiency standard for a dwelling unit to qualify under this  
27 section.

28 (c) The landlord/owner must provide the tenants and prospective tenants with:—

29 (i) the formula for deriving the costs;

30 (ii) the actual bill per unit of energy for the tenant's apartment from the utility/vendor;

31 (iii) total utility costs as well as costs for individual units and common areas within fifteen days  
32 of a written request to the landlord/owner;

33 (iv) the utility costs for each month of the most recent year.

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

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

40 (f) The tenant may seek dispute resolution regarding billing overcharges meter or energy  
41 monitoring system accuracy with the department of public utilities. The department may require  
42 testing and inspection of energy monitoring equipment. The department may require testing and  
43 inspection of any furnace, appliance, or other equipment used in conjunction with the energy  
44 allocation system.

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

47 (h) Landlords must provide tenants a monthly billing statement outlining any charges for heat or  
48 air conditioning measured by an energy monitoring system. Any payment on a bill rendered to a  
49 tenant in accordance with this section shall not be considered late unless payment is received by  
50 the property owner or agent 60 days or more after receipt of the bill by the tenant. Landlords may  
51 not charge tenants late fees for any payment that is considered late.

52 (i) An owner may not charge the tenant of a dwelling unit separately for heat or air conditioning  
53 measured by an energy monitoring system unless the system measures only heat or air  
54 conditioning that is supplied for the exclusive use of the particular dwelling unit and only to an  
55 area within the exclusive possession and control of the tenant of such dwelling unit and does not

56 measure any heat or air conditioning usage for any portion of the common areas or by any other  
57 party or dwelling unit. An owner may not charge the tenant of a dwelling unit separately for heat  
58 or air conditioning measured by an energy monitoring system unless the tenant has direct control  
59 over heating or air conditioning through the use of a thermostat or other device regulating the  
60 temperature of that particular dwelling unit.

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

69 (k) An owner may not charge the tenant separately nor allow tenant to be charged separately for  
70 allocated heat or air conditioning usage unless the tenant has signed a written rental agreement  
71 that clearly and conspicuously provides for such separate charge and that fully discloses in plain  
72 language the details of the energy monitoring system and billing arrangement between the owner  
73 and the tenant. Each bill for separately allocated heat or air conditioning usage shall clearly set  
74 forth all charges and all other relevant information including but not limited to the current and  
75 immediately preceding monitoring system readings and the date of each such reading the amount  
76 of heat or air conditioning consumed since the last reading the charge per unit of heat or air  
77 conditioning the total charge and the payment due date.

78 (l) An owner shall allocate the cost of heat to each individual dwelling unit by measuring run  
79 time of the energy system in question. For hot water baseboard heating systems the measuring  
80 device must also monitor temperature to verify that the water in each unit exceeds a minimum  
81 temperature appropriate for that heating system; provided that this requirement does not apply to  
82 any system installed prior to January 1998. This temperature monitoring shall be used as an  
83 additional quality control check in the billing process to ensure that the tenant is using the energy  
84 system when the measuring device so indicates.

85 (m) The energy monitoring system utilized shall be based on the amount of minutes each unit  
86 used based on the measuring device. Only the following additional factors may be utilized in the  
87 energy monitoring system:— BTU ratings of applicable energy devices, length of baseboard in  
88 each unit and temperature of relevant devices. No portion of the energy monitoring system can  
89 be based on any other factor including but not limited to the number of occupants in each unit or  
90 the size of each unit.

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

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

100 (p) An owner charging tenants separately for allocated heat or air conditioning usage may not  
101 elect to receive electricity or gas service from a competitive retail supplier unless he receives  
102 affirmative choice, as defined in section 1F of chapter 164 of the general laws, from two thirds of  
103 affected tenants.

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

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

107 (s) The department of public utilities and the department of public health shall promulgate  
108 regulations as it determines to be necessary to implement this section prior to the installation of  
109 any energy monitoring system described under this section.