

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:	
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/24/2021</i>
<i>Maria Duaiame Robinson</i>	<i>6th Middlesex</i>	<i>2/25/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/1/2021</i>

SENATE No. 2232

By Ms. Rausch, a petition (accompanied by bill, Senate, No. 2232) of Rebecca L. Rausch, Joanne M. Comerford, Maria Duaine 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:

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

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

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

10 “commercial building” shall not include a building owned or leased by a municipal or state
11 agency.

12 “Department,” the department of energy resources.

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

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

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

30 “Greenhouse gas,” as defined in chapter 21N.

31 “Gross floor area”, as defined in 780 CMR.

32 “Large building,” a building that meets any of the following criteria: (1) buildings owned
33 or leased by a municipality, state agency, or other government or quasi-government entity
34 consisting of not less than 10,000 square feet of gross floor area; (2) as of January 1, 2022,
35 residential or commercial buildings consisting of not less than 25,000 square feet of gross floor
36 area; (3) as of January 1, 2025, residential or commercial buildings consisting of not less than
37 20,000 square feet of gross floor area; and (4) as of January 1, 2028, residential or commercial
38 buildings consisting of not less than 15,000 square feet of gross floor area.

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

44 “Residential building”, a building or multiple buildings on a parcel of which not less than
45 50 per cent of the gross floor area, including hallways and other common space serving
46 residents, but excluding parking, is used for dwelling purposes, or any grouping of residential
47 buildings designated by the department or a municipality as an appropriate reporting unit for the
48 purposes of this chapter; provided, however, that “residential building” shall not include a
49 building owned or leased by a municipal or state agency.

50 “Tenant”, any tenant, tenant-stockholder of a cooperative apartment corporation, or
51 condominium unit owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

139 (2) The department shall establish reporting and data verification requirements for each
140 5-year compliance cycle. These standards shall apply only to large buildings.

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

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

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

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

161 demonstrate a decrease in normalized site greenhouse gas emissions over the last 2 years of the
162 5-year compliance cycle, as compared to the normalized site greenhouse gas emissions averaged
163 over the 2 years preceding the first year of the 5-year compliance cycle; provided, that switching
164 from oil or another fuel to natural gas for space heating or water heating shall not count toward a
165 building's compliance with this pathway. The department shall require large buildings subject to
166 the requirements of this paragraph to reduce normalized site energy use or greenhouse gas
167 emissions by at least 20 per cent over the initial 5-year compliance cycle, and may require
168 greater reductions if the department finds that it is feasible to do so and will help achieve the
169 commonwealth's greenhouse gas emissions limits under chapter 21N. The department must hold
170 at least one public hearing before setting the required reduction in normalized site energy use or
171 greenhouse gas emissions over the initial 5-year compliance cycle.

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

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

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

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

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

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

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

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

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

227 consisting of not less than 20,000 and not greater than 24,999 square feet of gross floor area, and
228 \$200 per day of noncompliance for buildings consisting of less than 20,000 square feet of gross
229 floor area. The department may set different levels of fines for different violations of this section.

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

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

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