

HOUSE No.

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 passage 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 |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4424 OF 2007-2008.]

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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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 line 2 the
2 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 following new
4 paragraphs:—

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

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

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

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

- 18 (C) The landlord/owner must provide the tenants and prospective tenants with:—
- 19 (a) the formula for deriving the costs;
- 20 (b) the actual bill per unit of energy from the utility/vendor;
- 21 (c) total utility costs as well as costs for individual units and common areas within five days of a written
22 request to the landlord/owner;
- 23 (d) the utility costs for each month of the most recent year.
- 24 (D) The measuring device must meet the accuracy standards for timing devices as set forth in section
25 5.55 “Timing Devices” of Handbook of the National Instituted of Standards and Testing (NIST).
- 26 (E) The landlord/owner is not permitted to make a profit nor charge any fees related to any utility billing.
27 Total charges to the tenants for heat or air conditioning use shall not exceed seventy five percent (75%)
28 of the landlord’s charges in any month.
- 29 (F) The tenant may seek dispute resolution regarding billing overcharges meter or energy monitoring
30 system accuracy with the Department of Public Utilities.
- 31 (G) Tenants may not be evicted for nonpayment of utility bills. Nonpayment will constitute a material
32 breach of lease and the tenants may seek a remedy or cure prior to a court hearing.
- 33 (H) Any payment on a bill rendered to a tenant in accordance with this section shall not be considered
34 late unless payment is received by the property owner or agent 15 days or more after receipt of the bill by
35 the tenant; provided that if the property owner or agent renders bills less frequently than monthly payment
36 shall not be deemed late unless received by the owner or agent more than 30 days after receipt of the bill
37 by the tenant. Notwithstanding the foregoing the landlord may impose a \$5.00 late fee for any payment
38 that is considered late.
- 39 (I) An owner may not charge the tenant of a dwelling unit separately for heat or air conditioning measured
40 by an energy monitoring system unless the system measures only heat or air conditioning that is supplied
41 for the exclusive use of the particular dwelling unit and only to an area within the exclusive possession
42 and control of the tenant of such dwelling unit and does not measure any heat or air conditioning usage
43 for any portion of the common areas or by any other party or dwelling unit.
- 44 (J) The property owner shall not in any manner charge or collect fees from tenants that are intended to
45 compensate the owner for the costs of purchasing, installing or maintaining the energy monitoring system
46 or any related costs of taking readings from the system and rendering bills. To ensure compliance with
47 this requirement the property owner shall provide upon the request of any tenant any and all records that
48 are necessary to demonstrate that the aggregate amount billed to all tenants through use of the energy
49 monitoring does not exceed seventy five percent (75%) of the amount billed by the utility company or
50 energy supplier to the owner for such space in the building that is exclusively occupied by the tenants.
- 51 (K) An owner may not charge the tenant separately nor allow tenant to be charged separately for
52 allocated heat or air conditioning usage unless the tenant has signed a written rental agreement that
53 clearly and conspicuously provides for such separate charge and that fully discloses in plain language the

54 details of the energy monitoring system and billing arrangement between the owner and the tenant. Each
55 bill for separately allocated heat or air conditioning usage shall clearly set forth all charges and all other
56 relevant information including but not limited to the current and immediately preceding monitoring system
57 readings and the date of each such reading the amount of heat or air conditioning consumed since the
58 last reading the charge per unit of heat or air conditioning the total charge and the payment due date.

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

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

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

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

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

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

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

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