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HOUSE BILL NO. 379

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend the Code of Virginia by adding in Article 5 of Chapter 9 of Title 15.2 a section numbered 15.2-987, relating to energy benchmarking; access to data on energy usage in covered buildings.*

Patron—Sullivan

Referred to Committee on Commerce and Energy

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 5 of Chapter 9 of Title 15.2 a section numbered 15.2-987 as follows:

§ 15.2-987. *Energy benchmarking.*

A. *As used in this section:*

"Account holder" means a utility's customer with a utility account that receives utility service at a covered building.

"Aggregated data" means the combined measured energy usage data for multiple utility accounts of customers receiving service in a covered building across a given period.

"Benchmarking" or "energy benchmarking" means accurately entering into the benchmarking tool all information pertaining to a covered building for a specific period necessary for the benchmarking tool to track and compare the covered building's energy performance against the energy performance of other buildings. This process shall be subject to guidelines established by the Department.

"Benchmarking tool" means the ENERGY STAR Portfolio Manager web-based tool developed by the United States Environmental Protection Agency, or any alternative system or tool approved by the Department that rates the performance of a qualifying building in relation to similar buildings and accounts for the impacts of year-to-year weather variations, building size, location, and several operating characteristics.

"Covered building" means a building with any of the following properties with one or more utility accounts and a gross floor area of not less than 30,000 square feet: (i) a single building; (ii) one or more buildings held in the condominium form of ownership that combines separate ownership of individual units with common ownership of other elements and governed by a single party or board; (iii) a campus of two or more buildings which are owned and operated by the same party.

"Department" means the Department of Energy.

"Energy" means (i) electricity, natural gas, or water sold by a utility to an account of a covered building; (ii) energy that is generated, from renewable, fuel oil, or other sources, on the premises of a covered building from a facility not owned by a utility and that is used to provide heating, cooling, lighting, or water heating, or for powering or fueling other end uses captured by the Energy Star Portfolio Manager; or (iii) any other sources of energy that a locality may designate.

"Gross Floor Area" means the total property area, measured between the outside surface of the exterior walls of the building. Gross Floor Area includes all areas inside the building including lobbies, tenant areas, common areas, meeting rooms, break rooms, atriums (count the base level only), restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, and storage rooms.

"Owner" means any of the following: (i) the person owning a covered building, as reflected in the land records of the circuit court clerk where the covered building is located, or such person's designee; (ii) the board of the owners' association for a condominium; (iii) the master association of a condominium where the powers of an owners' association are exercised by or delegated to a master association; (iv) the board of directors for a cooperative apartment corporation; (v) an agent authorized to act on behalf of any of the above,

"Utility" means a person that sells electricity, natural gas, or water services consumed in a covered building.

"Utility account" means an agreement between a utility and its customer under which the utility provides energy to a specified location.

B. Any locality may by ordinance require energy benchmarking under which a utility shall, upon request by the owner of a covered building, provide aggregated data for the covered building to the owner.

C. The provision of aggregated data for a covered building pursuant to an ordinance adopted under this section shall be subject to the following requirements:

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59 1. For a covered building with three or more active utility accounts in which no single utility
60 account is at least 85 percent of the aggregated energy usage, a utility shall provide aggregated data
61 for all utility accounts in the building for each of the 13 prior months;

62 2. For a covered building not described in subdivision 1, a utility shall provide aggregated data for
63 all utility accounts in the building for each of the prior 13 months only if each account holder consents,
64 in writing or electronically, to the provision of the account holder's usage data to the owner or utility.
65 Each utility account holder located in a covered property shall, within 30 days of a request by the
66 owner provide consent for provision of account holder's usage data to the owner or provide all
67 information that cannot otherwise be acquired by the owner and that is needed by the owner to comply
68 with the requirements of the ordinance;

69 3. If a condition set forth in subdivision 1 or 2 is satisfied:

70 a. The utility shall provide the aggregated data within four weeks of receiving the request for the
71 aggregated data from the owner of a covered building; and

72 b. The utility shall make available a covered building's usage data to the owner aggregated at
73 monthly intervals;

74 4. Each utility shall maintain records of the energy usage of covered buildings to which the utility
75 provide service for at least the most recent 13 complete calendar months;

76 5. A utility shall not be required to provide energy usage data for any energy that is generated, from
77 renewable or other sources, on the premises of a covered building from a facility not owned by the
78 utility; and

79 6. The owner and a utility shall not have any liability for the use or disclosure of usage data
80 provided as required by an ordinance adopted in accordance with this section.

81 D. A locality's ordinance shall include the following requirements:

82 1. Mandatory benchmarking for covered buildings

83 2. Owners shall provide aggregated data that is provided to them pursuant to the ordinance subject
84 to guidelines established by the Department;

85 3. Owners shall be provided reasonable notice of their obligations under the ordinance;

86 4. The ordinance shall be in effect for at least one year before compliance with its reporting
87 provisions may be enforced;

88 5. All buildings owned by the locality with one or more utility accounts and a gross floor area of not
89 less than 10,000 square feet shall be benchmarked for at least one year before the locality requires any
90 covered building to benchmarking pursuant to the ordinance;

91 6. Owners shall provide data for any energy that is generated, from renewable or other sources, on
92 the premises of a covered building from a facility not owned by a utility via the benchmarking tool
93 subject to ENERGY STAR Portfolio Manager guidelines unless other guidelines are established by the
94 Department;

95 7. Before making a benchmarking submission with respect to a covered property, the owner of the
96 covered property shall run all automated data quality checker functions available within the
97 benchmarking tool and verify that all data has been accurately entered into the benchmarking tool. In
98 order for the benchmarking submission to be considered in compliance with this section, the owner shall
99 correct all missing or incorrect information as identified by the data quality checker prior to
100 submission;

101 8. The locality may publish certain building data obtained pursuant to this ordinance;

102 9. Such other requirements as are germane to the purposes of this section.

103 E. An ordinance adopted under this section shall authorize a locality to exempt a covered building
104 from the requirements of this section for the following reasons:

105 1. The covered building does not have a certificate of occupancy or temporary certificate of
106 occupancy for the year being benchmarked;

107 2. A demolition permit has been issued for the covered building for the year being benchmarked;

108 3. The covered building had average physical occupancy of less than 50 percent for the year being
109 benchmarked;

110 4. The locality determines that, due to special circumstances unique to the covered building, strict
111 compliance with provisions of this section would cause undue hardship, would compromise national
112 security, or would not be in the public interest; or

113 5. Such other reason as the locality deems consistent with the reasons set forth in subdivisions 1
114 through 4.

115 F. Any violator of an ordinance adopted pursuant to this section is subject to a civil penalty of not
116 more than \$2,500, which shall be paid into the state treasury and deposited by the State Treasurer into
117 the general fund.

118 2. That the Department of Energy (the Department) shall develop uniform guidelines for energy
119 benchmarking under § 15.2-987 of the Code of Virginia, as created by this act. In developing the
120 guidelines for energy benchmarking, the Department shall incorporate input from equity

121 advocates, environmental justice advocates, environmental advocates, and representatives of the
122 Virginia Energy Efficiency Council, the Virginia Association of Realtors, the Virginia Municipal
123 League, the Virginia Association of Counties, the Virginia Association for Commercial Real Estate,
124 investor-owned utilities, and electric cooperatives. The Department shall finalize the uniform
125 guidelines for energy benchmarking pursuant to this act no later than December 1, 2022.

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