

HOUSE No. 4424

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, December 12, 2007.

The committee on Telecommunications, Utilities and Energy, to whom was referred the petition (accompanied by bill, House, No. 3293) 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. 4424) ought to pass [Representative Patrick of Falmouth dissenting].

For the committee,

BRIAN S. DEMPSEY.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

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
2 hereby amended by striking, in line 2, the following words
3 “installed prior to July 1, 1997.”.

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

3 (A) As used herein, the following words shall have the
4 following meanings:—

5 “Energy Monitoring Equipment” means a measuring device or
6 other equipment used to determine energy use.

7 “Energy Monitoring System” means a method of determining
8 the energy use consumed within a dwelling unit with the use of a
9 measuring device.

10 “Measuring Device” means a device used in an energy moni-
11 toring system that monitors operating time of energy monitoring
12 equipment.

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

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

18 (2) the previous tenant vacated the dwelling unit voluntarily, or
19 was evicted from the dwelling unit for nonpayment of rent or for
20 breach of lease or noncompliance with a rental agreement for the
21 dwelling unit; provided, however, that once a tenant of a dwelling
22 unit has been charged for the use of heat or air conditioning in
23 accordance with this section, such dwelling unit shall remain eli-

24 gible for the imposition of a charge for the use of heat or air con-
25 ditioning in all subsequent tenancies.

26 (C) The landlord/owner must provide the tenants and prospec-
27 tive tenants with:—

28 (a) the formula for deriving the costs;

29 (b) the actual bill per unit of energy from the utility/vendor;

30 (c) total utility costs as well as costs for individual units and
31 common areas within five days of a written request to the land-
32 lord/owner;

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

34 (D) The measuring device must meet the accuracy standards for
35 timing devices as set forth in section 5.55 “Timing Devices” of
36 Handbook 44 of the National Instituted of Standards and Testing
37 (NIST).

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

42 (F) The tenant may seek dispute resolution regarding billing,
43 overcharges, meter or energy monitoring system accuracy with the
44 Department of Public Utilities.

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

48 (H) Any payment on a bill rendered to a tenant in accordance
49 with this section shall not be considered late unless payment is
50 received by the property owner or agent 15 days or more after
51 receipt of the bill by the tenant; provided, that if the property
52 owner or agent renders bills less frequently than monthly, pay-
53 ment shall not be deemed late unless received by the owner or
54 agent more than 30 days after receipt of the bill by the tenant.
55 Notwithstanding the foregoing, the landlord may impose a \$5.00
56 late fee for any payment that is considered late.

57 (I) An owner may not charge the tenant of a dwelling unit sepa-
58 rately for heat or air conditioning measured by an energy moni-
59 toring system, unless the system measures only heat or air
60 conditioning that is supplied for the exclusive use of the particular
61 dwelling unit and only to an area within the exclusive possession
62 and control of the tenant of such dwelling unit and does not mea-

63 sure any heat or air conditioning usage for any portion of the
64 common areas or by any other party or dwelling unit.

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

77 (K) An owner may not charge the tenant separately, nor allow
78 tenant to be charged separately, for allocated heat or air condi-
79 tioning usage unless the tenant has signed a written rental agree-
80 ment that clearly and conspicuously provides for such separate
81 charge and that fully discloses in plain language the details of the
82 energy monitoring system and billing arrangement between the
83 owner and the tenant. Each bill for separately allocated heat or air
84 conditioning usage shall clearly set forth all charges and all other
85 relevant information, including, but not limited to, the current and
86 immediately preceding monitoring system readings and the date
87 of each such reading, the amount of heat or air conditioning con-
88 sumed since the last reading, the charge per unit of heat or air con-
89 ditioning, the total charge and the payment due date.

90 (L) An owner shall allocate the cost of heat to each individual
91 dwelling unit by measuring run time of the energy system in ques-
92 tion. For hot water baseboard heating systems the measuring
93 device must also monitor temperature to verify that the water in
94 each unit exceeds a minimum temperature appropriate for that
95 heating system (this requirement does not apply to any system
96 installed prior to January 2008). This temperature monitoring
97 shall be used as an additional quality control check in the billing
98 process to ensure that the tenant is using the energy system when
99 the measuring device so indicates.

100 (M) The energy monitoring system utilized shall be based on
101 the amount of minutes each unit used based on the measuring

102 device. Only the following additional factors may be utilized in
103 the energy monitoring system:—

104 BTU ratings of applicable energy devices, length of baseboard
105 in each unit, and temperature of relevant devices. No portion of
106 the energy monitoring system can be based on any other factor,
107 including, but not limited to the number of occupants in each unit
108 or the size of each unit.

109 (N) An owner may not shut off or refuse to provide heat to a
110 tenant on the basis that the tenant has not paid a separately allo-
111 cated heat charge.

112 (O) The owner shall maintain in good working order the
113 heating system to each dwelling unit and any component thereof,
114 including any energy monitoring system installed pursuant to this
115 section, and to respond in a timely manner to any request by the
116 tenant for the repair of any defect or malfunctioning in such
117 heating system. In the event of any over-charge by the landlord or
118 any violation of the state sanitary code, the tenant shall have all
119 rights and remedies provided under law for such overcharges or
120 such violations including, but not limited to, the rights and reme-
121 dies provided under Chapters 111, 186 and 239.

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

124 (Q) The department of public utilities and the department of
125 public health shall promulgate such additional regulations as it
126 determines to be necessary to implement this section.

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