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SENATE BILL 442

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO ENERGY CONSERVATION; ENACTING THE BUILDING ENERGY DISCLOSURE ACT; REQUIRING THE DISCLOSURE OF THE ENERGY EFFICIENCY OF STATE-OWNED BUILDINGS; REQUIRING OWNERS OF NONRESIDENTIAL BUILDINGS TO MEASURE AND TO DISCLOSE ENERGY PERFORMANCE IN ADVERTISING MATERIALS TO TENANTS AND PROSPECTIVE TENANTS, BUYERS AND LENDERS; REQUIRING UTILITIES TO RELEASE CONSUMPTION DATA TO BUILDING OWNERS; REQUIRING RULEMAKING BY THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT; ESTABLISHING A VIOLATION; PROVIDING A RIGHT OF ACTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the "Building Energy Disclosure Act".

SECTION 2. PURPOSE.--The purpose of the Building Energy Disclosure Act is to provide information to the state, building

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1 owners and the public that reflects the energy efficiency of  
2 buildings owned and used by those entities, thus promoting  
3 energy consumption awareness.

4 SECTION 3. DEFINITIONS.--As used in the Building Energy  
5 Disclosure Act:

6 A. "aggregate energy consumption" means the total  
7 amount of energy used by a building each calendar month as  
8 determined by all energy consumption measuring devices serving  
9 the building;

10 B. "benchmark" means to input and submit the total  
11 consumption of energy by a building for the most recent  
12 continuously occupied twelve-month period and other descriptive  
13 information for the building as required by the energy star  
14 portfolio manager tool of the United States environmental  
15 protection agency or an equivalent tool adopted by the  
16 department;

17 C. "benchmarking information" means information  
18 related to the energy used by a building as defined by the  
19 energy star portfolio manager tool of the United States  
20 environmental protection agency or an equivalent tool adopted  
21 by the department;

22 D. "benchmarking rating" means a rating that  
23 compares the energy use of the building to that of similar  
24 buildings or, if a rating is unavailable, the weather-  
25 normalized energy use intensity of the building as generated by

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1 the energy star portfolio manager tool of the United States  
2 environmental protection agency or an equivalent tool adopted  
3 by the department;

4 E. "building owner" means an individual or entity  
5 possessing a fee interest in a covered building;

6 F. "covered building" means a nonresidential  
7 building that is five thousand gross square feet or more;

8 G. "department" means the energy, minerals and  
9 natural resources department;

10 H. "energy star portfolio manager" means the tool  
11 developed and maintained by the United States environmental  
12 protection agency to track and assess the relative energy  
13 performance of similar buildings nationwide;

14 I. "state agency" means the state of New Mexico or  
15 any of its branches, agencies, departments, boards,  
16 instrumentalities or institutions, but does not include  
17 municipalities, counties or school districts;

18 J. "state building" means a building that is more  
19 than five thousand gross square feet and that is owned by a  
20 state agency or for which a state agency regularly pays all or  
21 part of the annual energy bills; provided that two or more  
22 buildings on the same tax lot shall be deemed to be one  
23 building;

24 K. "tenant" means a person or entity occupying or  
25 holding possession of a building or premises pursuant to a

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1 rental agreement; and

2 L. "utility" means an investor-owned entity that  
3 distributes and sells natural gas, electric or thermal energy  
4 services for buildings.

5 SECTION 4. BENCHMARKING REQUIRED FOR STATE BUILDINGS--  
6 DISCLOSURE.--No later than January 1, 2012, and no later than  
7 every January 1 thereafter, a state building shall be  
8 benchmarked by the state agency primarily responsible for the  
9 management of the building in coordination with the department.  
10 The state agency shall make benchmarking information available  
11 to the public on the state agency's internet site or on a  
12 public access internet site available to the state agency no  
13 later than January 1, 2013 and no later than every February 1  
14 thereafter. The state agency shall maintain the information it  
15 determines is necessary for the purpose of carrying out the  
16 provisions of the Building Energy Disclosure Act.

17 SECTION 5. BENCHMARKING REQUIRED FOR COVERED BUILDINGS--  
18 DISCLOSURE.--

19 A. On and after the date designated by the schedule  
20 in Subsection C of this section, the owner or operator of a  
21 covered building shall provide, in a form established by  
22 department rule, benchmarking information for the most recent  
23 continuously occupied twelve-month period to:

24 (1) prospective tenants negotiating a lease  
25 agreement;

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1 (2) potential buyers negotiating a purchase  
2 and sale agreement;

3 (3) potential lenders considering an  
4 application for financing or refinancing of the building; and

5 (4) current tenants upon request by the  
6 tenants.

7 B. On and after the date designated by the schedule  
8 in Subsection C of this section, the benchmarking rating for  
9 the most recent continuously occupied twelve-month period shall  
10 be stated in advertisements when a covered building is offered  
11 for sale or for lease.

12 C. The schedule for providing benchmarking  
13 information and benchmarking ratings required by this section  
14 shall be as follows:

15 (1) for a building that is two hundred  
16 thousand gross square feet or more, July 1, 2012;

17 (2) for a building that is seventy-five  
18 thousand gross square feet or more, July 1, 2013; and

19 (3) for a building that is five thousand gross  
20 square feet or more, July 1, 2014.

21 D. Benchmarking information and benchmarking  
22 ratings shall be valid for a period not to exceed one year.

23 E. A disclosure made pursuant to this section shall  
24 be adequate to inform a prospective buyer, lessee or lender  
25 regarding benchmarking information, and additional energy

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1 consumption information shall not be required.

2 F. Nothing in this section alters a duty of a  
3 lessor, seller, agent or broker to disclose the existence of a  
4 material fact affecting real property.

5 SECTION 6. MAINTAINING UTILITY RECORDS.--

6 A. On and after January 1, 2012, upon the written  
7 authorization or secure electronic authorization of a state  
8 building or covered building owner or operator, a utility shall  
9 provide the aggregate energy consumption for the building to  
10 the building owner or operator in a form that does not disclose  
11 personal identifying information of metered customers.

12 B. In carrying out the requirements of this  
13 section, a utility may use any method for providing the  
14 specified data in order to maximize efficiency and minimize  
15 overall program cost.

16 SECTION 7. TENANT REQUIRED TO PROVIDE INFORMATION.--

17 A. A tenant in a covered building shall provide,  
18 within thirty days of a request by the building owner or  
19 operator, information that cannot otherwise be acquired by the  
20 building owner or operator and that is needed by the building  
21 owner or operator to comply with the Building Energy Disclosure  
22 Act. The information shall be reported in a form and manner  
23 that does not disclose personal identifying information as  
24 established by department rule.

25 B. When a covered building owner or operator

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1 receives notice that a tenant intends to vacate the building  
2 before providing information pursuant to this section, the  
3 owner or operator shall request information relating to the  
4 tenant's energy use for any period of occupancy relevant to the  
5 owner or operator's obligation to benchmark. The tenant shall  
6 report the information to the owner or operator prior to  
7 vacating the building or, if such information is not available  
8 prior to vacating, as soon as practicable thereafter. The  
9 information shall be reported in a form and manner established  
10 by department rule.

11 SECTION 8. RULES.--The department shall promulgate rules  
12 necessary to carry out the provisions of the Building Energy  
13 Disclosure Act within one hundred twenty days of its effective  
14 date.

15 SECTION 9. VIOLATION--RIGHT OF ACTION.--It is a violation  
16 of the Building Energy Disclosure Act for a person to fail to  
17 comply with its requirements or to misrepresent any material  
18 fact required to be disclosed by it. The department or person  
19 to whom the obligation to comply is owed or to whom a  
20 misrepresentation has been made may bring a civil action in the  
21 district court to enforce the obligation or to mandate a  
22 correction of the misrepresentation. If successful, the  
23 department or person bringing the action is entitled to  
24 reasonable attorney fees and costs attributable to the action.

25 SECTION 10. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2011.

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