

1 H.57

2 Introduced by Representatives Cheney of Norwich, Botzow of Pownal,
3 Edwards of Brattleboro, Jerman of Essex and Masland of
4 Thetford

5 Referred to Committee on

6 Date:

7 Subject: Energy; energy efficiency; real property; buildings; energy
8 performance disclosure; offer to sell

9 Statement of purpose: This bill proposes to require, at the time a commercial
10 or residential building or unit is offered for sale, the seller or agent to complete
11 a statement of energy performance; to inform potential buyers of their right to
12 obtain the statement; and to supply the statement to a buyer prior to any such
13 sale. The bill also proposes to group these and other provisions relating to
14 building energy and process fuel efficiency found in different titles into one
15 chapter within Title 30 (public service).

16 An act relating to disclosure to potential buyers of a building's energy
17 performance

18 It is hereby enacted by the General Assembly of the State of Vermont:

1 * * * Consolidating Existing Law; Building Energy Efficiency * * *

2 Sec. 1. RECODIFICATION

3 (a) 10 V.S.A. § 581 (building efficiency goals), 30 V.S.A. § 235 (heating
4 and process fuel efficiency program), and 30 V.S.A. § 203a (fuel efficiency
5 fund) are recodified respectively as 30 V.S.A. §§ 51, 52, and 53.

6 (b) 21 V.S.A. §§ 266 (residential building energy standards), 267 (home
7 energy rating organization accreditation), 268 (commercial building energy
8 standards), and 269 (compliance plan) are recodified respectively as 30 V.S.A.
9 §§ 61, 62, 63, and 64.

10 Sec. 2. DESIGNATION

11 (a) 30 V.S.A. chapter 2 is designated to read:

12 CHAPTER 2. BUILDING AND PROCESS FUEL EFFICIENCY

13 (b) Within 30 V.S.A. chapter 2:

14 (1) §§ 51–53 shall be within subchapter 1 which is designated to read:

15 Subchapter 1. General Provisions

16 (2) §§ 61–64 shall be within subchapter 2 which is designated to read:

17 Subchapter 2. Building Energy Standards

18 Sec. 3. STATUTORY REVISION

19 The office of legislative council shall revise in accordance with Secs. 1 and
20 2 of this act any references contained in the Vermont Statutes Annotated to the
21 statutes recodified by those sections. Any references in session law to these

1 statutes as previously codified shall be deemed to refer to the statutes as
2 recodified by this act. Within 21 V.S.A. chapter 3, the designation of
3 subchapter 9 (building energy standards) shall be deleted.

4 * * * Energy Use Disclosure; Offer to Sell Buildings or Units * * *

5 Sec. 4. 30 V.S.A. chapter 2, subchapter 3 is added to read:

6 Subchapter 3. Disclosure; Building Energy Performance

7 § 71. PURPOSE

8 The purpose of this subchapter is to improve the energy efficiency of
9 buildings by assuring that prospective purchasers of buildings are fully
10 informed of the energy performance of the buildings they may purchase.

11 § 72. SCOPE

12 This subchapter applies to the sale of all new and existing residential
13 buildings, residential units, commercial buildings, and commercial units, and
14 real property containing such buildings or units, but does not apply to any of
15 the following:

16 (1) A transfer or change of title to real property or the right to possess
17 real property by reason of inheritance, gift, marriage, or divorce.

18 (2) An involuntary transfer of title resulting from default on an
19 obligation secured by real property.

20 (3) The sale of a low energy use building.

21 (4) The sale of a building that does not contain conditioned space.

1 (5) The sale of real property that does not contain a building.

2 (6) The sale of a building that is used only as temporary living quarters
3 for persons engaged in the pursuit of game or wild animals.

4 § 73. DEFINITIONS

5 In this subchapter:

6 (1) “Asset rating methodology” means a method to rate a building’s
7 energy use that uses modeling under standardized weather and occupancy
8 conditions, adjusted to account for personal variances in energy consumption.

9 (2) “Board” means the public service board under section 3 of this title.

10 (3) “Btu” means British thermal units.

11 (4) “Building” means any enclosed structure created for use as a
12 residence, a place of business, or any other activities, whether commercial or
13 noncommercial in character.

14 (5) “Building envelope” means the exterior of a building, including the
15 foundation, roof, walls, windows, doors, and attic spaces.

16 (6) “Carbon intensity” means the amount of carbon by weight emitted
17 per unit of energy consumed.

18 (7) “CO₂” means carbon dioxide.

19 (8) “Commercial building” means any building that is not a residential
20 building and is not a farm structure as defined in 24 V.S.A. § 4413(d)(1). The
21 term excludes equipment and physical systems that are exempt from the

1 commercial building energy standards under subdivision 63(a)(2) of this title
2 (industrial and manufacturing processes).

3 (9) “Commercial unit” means that part of a commercial building which
4 is occupied by or intended for occupation by an individual owner or tenant.

5 (10) “Conditioned space” means space within a building that is heated
6 or cooled or both by one or more physical systems.

7 (11) “Department” means the department of public service under
8 section 1 of this title.

9 (12) “Energy audit” means an on-site technical review of the energy
10 performance of a building or unit completed by a professional certified in
11 accordance with this subchapter.

12 (13) “Energy auditor” means a professional certified pursuant to
13 subsection 76(b) of this title and the rules of the department to conduct and
14 complete an energy audit.

15 (14) “Energy usage data” means information, held by an entity that
16 supplies fuel consumed by a physical system, is a public utility under section
17 203 of this title, or is appointed to deliver energy efficiency programs under
18 section 52 or subdivision 209(d)(2) of this title, related to a customer’s energy
19 demand measured by kWh, Btu, Therm, or the appropriate energy
20 measurement recorded by the entity. Energy usage data includes an amount of
21 fuel delivered to a building or unit by an entity that supplies fuel consumed in a

1 physical system. Energy usage data does not include a customer's payment
2 information or history.

3 (15) "Greenhouse gas rating" means an estimate of the emissions, from
4 a building or unit, of carbon dioxide and other gases that trap heat in the
5 atmosphere based on the energy consumption of the building or unit and type
6 of fuel consumed.

7 (16) "kWh" means kilowatt hour or hours.

8 (17) "Low energy use building" means a commercial building or
9 residential building whose peak energy usage design rates are less than the
10 design rates stated in subdivision 61(g)(1) of this title.

11 (18) With respect to a building, real property that contains a building, or
12 a unit, "offer" includes each of the following:

13 (A) Listing the building, property, or unit for sale.

14 (B) Advertising or publicizing the sale of the building, property, or
15 unit.

16 (C) The solicitation, by an owner or occupant of the building,
17 property, or unit, of its sale.

18 (D) Any act that manifests the willingness of an owner or occupant of
19 the building, property, or unit to enter into its sale, so made as to justify
20 another person in understanding that his or her assent to that sale is invited and
21 will conclude the sale.

1 (19) “Physical system” means equipment that consumes energy and is
2 integrated into a building’s design, function, or operation.

3 (20) “Residential building” has the same meaning as “residential
4 buildings” under subdivision 61(a)(2) of this title.

5 (21) “Residential unit” means a separately enclosed space within a
6 building that meets or is intended to meet the living needs of one or more
7 individuals.

8 (22) “Sale” means an entry into a contractual obligation to transfer all or
9 any part of the ownership of a building, real property that contains a building,
10 or a unit, regardless of whether the contract is subsequently breached,
11 modified, or performed.

12 (23) “Seller” means a person whose building, real property, or unit is or
13 is to be transferred by sale or who makes an offer of sale, and the person’s
14 agent, if any.

15 (24) “Standardized weather and occupancy conditions” means the use,
16 in determining the energy consumption of a building or unit, of average
17 climate conditions and average per-capita consumption for the geographic area
18 in which the building or unit is located.

19 (25) “Statement of energy performance” means a written disclosure
20 statement that includes information on the energy performance of a building or
21 unit pursuant to this subchapter.

1 (26) “Technical scale” means rating the energy performance of a
2 building or unit according to predetermined categories and region-specific
3 building characteristics.

4 (27) “Therm” means a unit of heat energy equal to 100,000 Btu.

5 (28) “Unit,” when used as a stand-alone term, includes commercial units
6 and residential units, except when the context clearly refers to a unit of
7 measurement.

8 § 74. PREPARATION AND AVAILABILITY OF STATEMENT; OFFER

9 FOR SALE

10 (a) This section applies to an offer for sale of an interest in a building, real
11 property that contains a building, or a unit that is within the scope of this
12 subchapter.

13 (b) Prior to an offer for sale, the seller shall complete a statement of energy
14 performance that applies to the building, property, or unit for which an interest
15 is to be offered for sale. An energy audit that otherwise complies with this
16 subchapter shall be sufficient for completion of this statement if the audit was
17 prepared within 10 years of the offer for sale, or since the last addition or
18 renovation of the building or unit that would be subject to the energy standards
19 adopted pursuant to subchapter 2 of this chapter, whichever is later.

20 (c) At the time of an offer for sale, the seller shall inform each prospective
21 buyer of his or her right to obtain the statement of energy performance and

1 shall provide a copy of the statement to any prospective buyer who requests a
2 copy.

3 § 75. DISCLOSURE OF STATEMENT ON SALE

4 Prior to the sale of any interest in a building, real property that contains a
5 building, or a unit that is within the scope of this subchapter, the seller shall
6 provide the statement of energy performance to the buyer, who shall
7 acknowledge receipt of the statement by signing a copy of the statement.

8 § 76. STATEMENT OF ENERGY PERFORMANCE; ENERGY AUDITS

9 AND AUDITORS

10 (a)(1) A statement of energy performance shall include a standardized
11 valuation of the energy use of the relevant building or unit sufficient to allow
12 prospective buyers to compare and assess the energy performance of that
13 building or unit to other buildings and units of the same type (i.e., compare
14 commercial buildings to other commercial buildings, residential buildings to
15 other residential buildings).

16 (2) By rule, the department shall develop a standardized rating system
17 that shall be used in statements of energy performance completed under this
18 subchapter. This rating system shall include a score symbolic of the overall
19 energy performance of a building or unit under standardized weather and
20 occupancy conditions. This score shall be calculated using an asset rating

1 methodology. An asset rating shall include a total of the energy consumption
2 of the building or unit and a greenhouse gas rating.

3 (A) In computing an asset rating, the characteristics of the building or
4 unit shall be analyzed in accordance with a technical scale.

5 (B) The greenhouse gas rating shall estimate the annual amount of
6 carbon dioxide emissions of a building or unit as the sum of the annual carbon
7 intensity of each fuel source used in the building or unit. The department shall
8 have authority by rule to adopt standard estimates of carbon intensity by fuel
9 source to be used in greenhouse gas ratings under this subchapter. In the
10 absence of a standard estimate contained in a rule adopted by the department, a
11 greenhouse gas rating shall be calculated by aggregating the following
12 estimates:

13 (i) 1.5 pounds of CO₂ per kWh of electricity consumed.

14 (ii) 0.12 pounds of CO₂ per cubic foot of natural gas consumed.

15 (iii) 22.29 pounds of CO₂ per gallon of fuel oil consumed.

16 (b) A statement of energy performance prepared pursuant to this section
17 shall include a written report of the results of the energy audit of the building
18 or unit.

19 (1) The energy audit shall:

20 (A) Be conducted and completed by an energy auditor.

1 (B) Include a comprehensive inspection to assess air and energy
2 leakage and propose cost-effective improvements. The inspection shall
3 include testing the building envelope, insulation, ventilation, water heating
4 system, space heating and cooling systems, appliances, and lighting.

5 (2) By rule, the department shall develop standardized requirements for
6 energy audits and certification of energy auditors under this subchapter.

7 (A) To obtain certification as an energy auditor, a person shall be
8 qualified to perform a comprehensive inspection of a building, property, and
9 unit to assess air and energy leakage and propose cost effective improvements,
10 and to test the building envelope, insulation, ventilation, water heating system,
11 space heating and cooling systems, appliances, and lighting.

12 (B) In developing standardized requirements for energy auditors, the
13 department shall determine whether, as to energy audits of residential buildings
14 and residential units, the accreditation process under section 62 of this title
15 complies with and is suitable for implementing this subchapter. If the
16 department's determination is affirmative, then it may adopt such process for
17 certification under this subchapter of energy auditors for residential buildings
18 and residential units. Otherwise, the department shall revise the accreditation
19 process under section 62 of this title so that the process complies with and can
20 be used for implementing this subchapter and for the purposes of section 62 of
21 this title.

1 § 77. ENERGY USAGE DATA

2 With respect to the sale of a building, real property that contains a building,
3 or a unit that is within the scope of this subchapter, the retention of an agent to
4 perform such sale or an energy auditor shall constitute consent by the owner of
5 the building, property, or unit to the release of energy usage data to the agent
6 and energy auditor. On request of such owner, agent, or energy auditor, an
7 entity that supplies fuel consumed by a building's physical system, is a public
8 utility under section 203 of this title, or is appointed to deliver energy
9 efficiency programs under section 52 or subdivision 209(d)(2) of this title shall
10 release to the requestor the energy usage data applicable to the building,
11 property, or unit. An agent or energy auditor receiving such energy usage data
12 shall not disclose the data received to a person other than the owner, agent, or
13 energy auditor without the prior consent of the owner.

14 § 78. ELECTION NOT TO CLOSE

15 Notwithstanding any law or contractual provision to the contrary, with
16 respect to a building, real property that contains a building, or unit that is
17 within the scope of this chapter, a prospective buyer may without penalty elect
18 not to close on or take title to the building, property, or unit if the seller has not
19 complied with this subchapter, and any deposit shall be returned immediately
20 to the buyer.

1 § 79. ENFORCEMENT; PENALTY

2 (a) The department may issue a ticket imposing an administrative penalty
3 of not more than \$2,000.00 per violation on a seller or energy auditor that
4 violates this subchapter or the rules of the department under this subchapter.
5 The ticket shall be served as provided under the Vermont Rules of Civil
6 Procedure.

7 (b) Within 21 days, a person on whom a ticket is served under subsection
8 (a) of this section may submit to the board a request for hearing. Absent such a
9 hearing request, the ticket shall become final on the 22nd day and payment of
10 the administrative penalty shall be required.

11 (c) On receipt of a hearing request under subsection (b) of this section, the
12 chair of the board shall assign any such petition to a hearing officer under
13 subsection 8(a) of this title. The issues before the board shall be limited to
14 whether a violation occurred or whether the penalty assessed in a ticket is
15 appropriate under the rules adopted by the department under subsection (e) of
16 this section, or both. Notwithstanding subsection 8(c) of this title, the hearing
17 officer shall hear and finally determine the request for hearing, and shall make
18 his or her determination within 90 days of the request's receipt. For the
19 purpose of section 12 of this title, the hearing officer's decision shall be
20 deemed a final judgment of the board that may be appealed to the supreme
21 court. Payment of any penalty assessed by the hearing officer shall be made

1 within 30 days of the officer's determination, unless the determination is
2 appealed and the supreme court grants a stay of payment pending appeal.

3 (d) The department shall be authorized to:

4 (1) Investigate an alleged violation.

5 (2) Issue a warning with respect to an alleged violation. Such a warning
6 shall not constitute a determination that a violation in fact occurred, shall not
7 include a penalty, and shall not be subject to a request for hearing under
8 subsection (b) of this section.

9 (e) The department shall adopt rules to implement this section. At a
10 minimum, these rules shall:

11 (1) Define classes of violations and an appropriate range of penalties for
12 each violation. The classes of violations and range of penalties shall take into
13 account the degree of the potential impact of the violation and the number of
14 prior warnings and tickets issued to the alleged violator under this section.

15 (2) Describe when it is appropriate to issue a warning and when it is
16 appropriate to issue a ticket and penalty.

17 (f) Under this section, the department shall track complaints, investigations,
18 and their disposition; issuance of warnings; issuance of tickets; penalties
19 assessed in tickets; penalty adjustments by the board; and payment of
20 penalties. The department shall organize the information described in this
21 subdivision in a database from which reports can readily be generated.

1 § 80. RIGHTS AND REMEDIES NONEXCLUSIVE

2 The rights and remedies created by sections 78 and 79 of this title shall not
3 be construed to limit any rights and remedies otherwise provided by law,
4 except that the request for hearing under subsections 79(b) and (c) of this title
5 shall be the sole avenue to challenge a ticket and penalty issued under
6 subsection 78(a) of this title.

7 Sec. 5. EFFECTIVE DATES; DEPARTMENT RULEMAKING

8 (a) This section shall take effect on passage.

9 (b) Secs. 1 through 3 (recodification; designation; statutory revision) of this
10 act shall take effect on July 1, 2011.

11 (c) Sec. 4 (disclosure; building energy performance) of this act shall take
12 effect on July 1, 2012, except that on passage of this act, the department of
13 public service shall have authority to adopt rules in accordance with the
14 provisions of Sec. 4.

15 (d) On or before April 1, 2011, the department shall adopt all rules required
16 by Sec. 4 of this act.