

## HOUSE BILL No. 2662

By Representative Parker

2-12

1 AN ACT concerning energy efficiency; creating the energy efficiency  
2 benchmark act; relating to state-owned buildings and privately owned  
3 buildings; relating to the department of health and environment;  
4 establishing state energy reduction targets.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. (a) This act shall be known and may be cited as the energy  
8 efficiency benchmark act.

9 (b) The purpose of the energy efficiency benchmark act is to assist  
10 owners and occupants of large buildings and the state in saving money  
11 through increased energy efficiency.

12 Sec. 2. (a) As used in this section:

13 (1) "Affected state entity" means: (A) All executive branch agencies  
14 and departments over which the governor has executive authority; and (B)  
15 any other public authority or commission in which the governor appoints  
16 the chairperson, the chief executive or the majority of the members.

17 (2) "Average energy use intensity" or "average EUI" means the  
18 average source energy use per square foot for any building owned,  
19 operated or leased by an affected state entity.

20 (3) "Central management and implementation team" or "CMIT"  
21 means the team established by the department of health and environment  
22 pursuant to subsection (c).

23 (4) "Guidelines" means the guidelines developed by the central  
24 management and implementation team pursuant to subsection (c)(2)(A).

25 (5) "Source energy" means all the energy used in delivering energy to  
26 an affected state entity, including power generation and transmission and  
27 distribution losses.

28 (6) "Target" means the energy reduction target established pursuant to  
29 subsection (b).

30 (b) On or before April 1, 2030, all affected state entities shall  
31 collectively reduce the average EUI in buildings owned, operated or leased  
32 by such affected state entities by at least 20% from a baseline of the  
33 average EUI of such buildings for fiscal year 2022.

34 (c) On or before January 1, 2021, the department of health and  
35 environment shall establish a central management and implementation  
36 team to administer this section.

1 (1) The CMIT is authorized to:

2 (A) Take all appropriate measures to ensure the target is met;

3 (B) direct affected state entities to comply with the requirements of  
4 this section; and

5 (C) provide strategic, technical and other assistance to each affected  
6 state entity to support implementation of this section.

7 (2) The CMIT shall:

8 (A) On or before April 1, 2021, create guidelines to assist affected  
9 state entities in complying with this section, including a scoring system for  
10 energy use and a determination of a threshold to identify buildings that  
11 shall be required to undertake an audit, and shall update such guidelines as  
12 necessary;

13 (B) on or before July 1, 2021, develop annual milestones for  
14 achieving the energy reduction target and develop and implement reporting  
15 requirements to document each affected state entity's progress toward  
16 meeting the energy reduction target;

17 (C) on or before July 1, 2022, develop a comprehensive operations  
18 and maintenance plan for the state's building portfolio to help achieve no-  
19 cost and low-cost efficiency improvements and ensure that efficiency  
20 savings are sustained; and

21 (D) on or before January 15 of each year, submit an annual report to  
22 the governor and the legislature detailing the progress that affected state  
23 entities are making toward meeting the target.

24 (3) Any state agency with oversight on energy initiatives is hereby  
25 directed to provide technical assistance to the CMIT and each of the  
26 affected state entities with respect to complying with and implementing the  
27 requirements of this section and the guidelines established by the CMIT  
28 pursuant to this section.

29 (d) In addition to the requirements established above, each of the  
30 affected state entities shall comply with the following:

31 (1) In each fiscal year, each affected state entity shall measure, using  
32 the methods established in the guidelines, the energy use in any state-  
33 owned, operated or leased building having an area greater than 20,000  
34 square feet. Buildings on master-metered campuses shall be benchmarked  
35 at the campus level until they are sub-metered at the building level, after  
36 which such buildings shall be benchmarked at the building level.

37 (2) Buildings that receive low benchmark scores, as defined by the  
38 guidelines, shall undergo an American society of heating, refrigeration and  
39 air-conditioning engineers (ASHRAE) level II energy audit, or any  
40 comparable audit that the CMIT approves. Campuses that have above-  
41 average EUIs or poor benchmark scores, as defined by the guidelines or  
42 are otherwise prioritized by the affected state entities and the CMIT, shall  
43 undergo a campus-wide ASHRAE level II energy audit or any comparable

1 audit that the CMIT approves. In addition to energy efficiency measures,  
2 the audit shall identify opportunities for cost-effective on-site renewable  
3 generation and high-efficiency combined heat and power.

4 (3) Affected state entities shall implement a cost-effective portfolio of  
5 measures identified and recommended in the audit and shall complete or  
6 make substantial progress toward completion of such measures within two  
7 years of completion of the audit. A portfolio may include, but shall not be  
8 limited to, no-cost and low-cost operational improvements, retro-  
9 commissioning, capital energy efficiency retrofits, on-site renewable  
10 generation and high-efficiency combined heat and power and any other  
11 measures identified by the CMIT.

12 (4) As part of the capital planning process, all affected state entities  
13 shall include an energy efficiency analysis in the design phase of all capital  
14 project plans. The capital project plan shall include energy-efficient  
15 measures or technologies determined to be most cost-effective, as defined  
16 by the guidelines.

17 (5) Not later than October 1, 2022, and each year thereafter, each  
18 affected state entity shall submit all information requested by the CMIT on  
19 all state-owned and managed buildings having an area over 20,000 square  
20 feet, as well as any other information related to assessing compliance with  
21 this section.

22 (e) Electric usage attributable to vehicle charging shall not be  
23 included in the target and requirements of this section. The CMIT is  
24 authorized to provide other exemptions for good cause shown pursuant to  
25 criteria and procedures established in the guidelines including exceptions  
26 associated with buildings that have obtained and maintained energy star or  
27 similar certification or have benchmark scores placing such buildings in  
28 the top quartile of comparable buildings for the particular year at issue.  
29 Affected state entities shall submit requests for annual exemptions to the  
30 CMIT. Any such request for exemptions and resulting determination by the  
31 CMIT shall be included in the annual report.

32 Sec. 3. (a) As used in this section:

33 (1) "Benchmark" means to input and submit to the benchmarking tool  
34 the total use of energy and water for a building for the previous calendar  
35 year ending December 31 and other descriptive information for such  
36 building as required by the benchmarking tool.

37 (2) "Benchmarking tool" means the internet-based database system  
38 developed by the United States environmental protection agency, such as  
39 portfolio manager and any complementary interface designated by the  
40 secretary of health and environment, to track and assess the energy and  
41 water use of certain buildings relative to similar buildings.

42 (3) "Covered building" means:

43 (A) (i) Any building in this state that exceeds 50,000 gross square

1 feet; or

2 (ii) two or more buildings on the same tract, lot or piece of real estate  
3 for tax purposes that together exceed 100,000 gross square feet; or

4 (iii) two or more buildings held in the condominium form of  
5 ownership that are governed by the same board of managers and that,  
6 together, exceed 100,000 gross square feet; and

7 (B) "covered building" does not mean any building that is owned,  
8 operated or leased by any affected state entity, as defined in section 2, and  
9 amendments thereto.

10 (4) "Data center" means a room or rooms used primarily to house  
11 high-density computing equipment, such as server racks, used for data  
12 storage and processing.

13 (5) "Dwelling unit" means a single unit consisting of one or more  
14 habitable rooms, occupied or arranged to be occupied as a unit separate  
15 from all other units within a building and used primarily for residential  
16 purposes but not primarily for professional or commercial purposes.

17 (6) "Energy" means electricity, natural gas, fuel oil and steam.

18 (7) "Owner" means the owner of record, including:

19 (A) The net lessee in the case of a building subject to a net lease with  
20 a term of at least 49 years, inclusive of all renewal options;

21 (B) the board of managers in the case of a condominium; and

22 (C) the board of directors in the case of a cooperative apartment  
23 corporation.

24 (8) "Tenant" means any tenant, tenant-stockholder of a cooperative  
25 apartment corporation, condominium unit owner or other occupant.

26 (b) On and after May 1, 2022, each utility shall maintain records of  
27 the energy usage data of all covered buildings to which they provide  
28 service for at least the most recent 12 complete calendar months.

29 (1) Where a covered building has five or more individually metered  
30 dwelling units, each utility shall deliver to the owner information showing  
31 the aggregated energy usage data of all utility customers in the same  
32 building for each of the 12 prior months.

33 (2) Each utility shall deliver to the owner of a covered building,  
34 upload to the benchmarking tool or otherwise provide aggregated energy  
35 usage data within four weeks of receiving a request from an owner,  
36 owner's agent or operator of a covered building.

37 (3) Notwithstanding any other law, energy usage data aggregated in  
38 this manner shall not be deemed customer utility usage information or  
39 confidential information by the utility for purposes of delivery to the  
40 owner, owner's agent or operator of a covered building.

41 (4) The owner and utility shall not have any liability for any use or  
42 disclosure by others of aggregated energy usage data delivered as required  
43 by this section.

1 (5) Each utility shall make available the covered building energy  
2 usage data aggregated at a monthly level unless otherwise specified by the  
3 secretary of health and environment.

4 (c) (1) The owner of a covered building shall annually benchmark  
5 such covered building not later than May 1, 2022, and not later than every  
6 May 1 thereafter. Benchmarking of water shall not be required unless the  
7 building was equipped with automatic meter-reading equipment for the  
8 entirety of the previous calendar year. The owner or the owner's  
9 representative performing the benchmarking shall consult with the  
10 operating staff of the building, as appropriate.

11 (2) Where a unit or other space in a covered building, other than a  
12 dwelling unit, is occupied by a tenant and such unit or space is separately  
13 metered by a utility company, the owner of such building shall request  
14 from such tenant information relating to such tenant's separately metered  
15 energy use for the previous calendar year and such tenant shall report such  
16 information to such owner.

17 (A) Such owner shall request information relating to such tenant's  
18 separately metered energy use for the previous calendar year not earlier  
19 than January 1 and not later than January 31 of any year in which the  
20 owner is required to benchmark such building. The secretary of health and  
21 environment may require that such owner provide such tenant with a form  
22 designated by the department to report such information.

23 (B) Such tenant shall report information relating to such tenant's  
24 separately metered energy use for the previous calendar year not later than  
25 February 15 of any year in which the owner is required to benchmark such  
26 building. Such information shall be reported in a form and manner  
27 determined by the secretary of health and environment.

28 (C) Where such owner receives notice that such tenant intends to  
29 vacate such unit or other space before reporting information in accordance  
30 with this paragraph, such owner shall request information relating to such  
31 tenant's energy use for any period of occupancy relevant to such owner's  
32 obligation to benchmark. Any such tenant shall report such information to  
33 the owner of such building prior to vacating such unit or other space, or as  
34 soon as practicable thereafter, regardless of whether such owner has  
35 requested information pursuant to this section. Such information shall be  
36 reported in a form and manner determined by the secretary of health and  
37 environment.

38 (D) The failure of any or all tenants to report the information required  
39 by this paragraph to the owner shall not relieve such owner of the  
40 obligation to benchmark pursuant to this section. Such owner shall not be  
41 required to benchmark information that is not reported by a tenant unless  
42 otherwise available to such owner.

43 (3) Owners of covered buildings shall maintain such records as the

1 department determines are necessary for carrying out the purposes of this  
2 act, including, but not limited to, energy and water bills and reports of  
3 forms received from tenants. Such records shall be preserved for a period  
4 of three years. The secretary of health and environment may consent to  
5 their destruction within that period or may require that such records be  
6 preserved longer than such period. At the request of the secretary, such  
7 records shall be made available for inspection and audit by the department  
8 at the place of business of the owner or at the department.

9 (4) It shall be unlawful for the owner of a covered building to fail to  
10 benchmark pursuant to this section. Willful noncompliance with this  
11 section shall be subject to a fine to be set by rules and regulations  
12 promulgated by the department of health and environment.

13 (d) Information shall be directly uploaded to the benchmarking tool in  
14 accordance with the following:

15 (1) The secretary of health and environment shall encourage and  
16 facilitate any utility or any other source authorized by the department to  
17 upload directly to the benchmarking tool, as soon as practicable after  
18 December 31 of each year, information necessary to benchmark a building.  
19 Where information is uploaded directly to the benchmarking tool by a  
20 utility company or other authorized source, owners and tenants shall not be  
21 obligated to request and report such information pursuant to this section.

22 (2) The secretary of health and environment shall upload directly to  
23 the benchmarking tool information on water use at all buildings that were  
24 equipped with automatic meter reading equipment for the entirety of the  
25 previous calendar year and that are subject to the benchmarking  
26 requirements of this act.

27 (e) The secretary of health and environment may suspend all or part  
28 of the requirement to benchmark pursuant to this section upon a written  
29 finding that a technological deficiency in the benchmarking tool precludes  
30 compliance with this section. The secretary may lift all or part of any such  
31 suspension upon a written finding that such deficiency has been corrected.  
32 The secretary shall notify the governor and the legislature upon issuing a  
33 suspension or lifting a suspension pursuant to this section.

34 (f) The secretary of health and environment shall:

35 (1) Annually notify owners of covered buildings of their obligation to  
36 benchmark pursuant to this section. The failure to notify any such owner  
37 shall not affect the obligation of such owner to benchmark pursuant to this  
38 section.

39 (2) Notify owners of covered buildings of any suspension or lifting of  
40 a suspension pursuant to this section.

41 (3) Make information available regarding the owners of covered  
42 buildings for which no benchmarking information was generated by the  
43 benchmarking tool.

1 (g) The secretary of health and environment shall make information  
2 generated by the benchmarking tool available to the public on the internet  
3 not later than September 1, 2022, and not later than every September 1  
4 thereafter for covered buildings whose primary use is residential. Such  
5 information shall include, but not be limited to:

6 (1) The energy utilization index;  
7 (2) the water use per gross square foot, if required;  
8 (3) where available, a rating that compares the energy and water use  
9 of the building to that of similar buildings; and

10 (4) a comparison of data across calendar years for any years such  
11 building was benchmarked. Covered buildings shall not have information  
12 generated by the benchmarking tool publicly disclosed during the first year  
13 of benchmarking. Covered buildings whose primary use is residential shall  
14 not have information generated by the benchmarking tool publicly  
15 disclosed during the first two years after enactment.

16 (h) Ratings generated by the benchmarking tool for a covered  
17 building that contains a data center, television studio or trading floor that,  
18 together, exceed 10% of the gross square footage of any such building  
19 shall not be disclosed until the secretary of health and environment  
20 determines that the benchmarking tool can make adequate adjustments for  
21 such facilities. When the secretary determines that the benchmarking tool  
22 can make such adjustments, the secretary shall report such determination  
23 to the governor and the legislature. Until such determination is made, the  
24 department shall report biennially to the governor and the legislature that  
25 the benchmarking tool is unable to make such adjustments.

26 Sec. 4. (a) Not later than December 31, 2022, and each year  
27 thereafter, the secretary of health and environment shall prepare and  
28 submit to the governor and the legislature a report reviewing and  
29 evaluating the administration and enforcement of this act and analyzing  
30 data obtained from the benchmarking tool. Such report shall contain the  
31 following information:

32 (1) The energy and water efficiency of buildings covered by this act;  
33 (2) the accuracy of benchmarked data and whether there is a need to  
34 train or certify individuals who benchmark;

35 (3) compliance with the requirements of this act;

36 (4) any administrative or legislative recommendations for  
37 strengthening the administration and enforcement of this act;

38 (5) the effectiveness of the benchmarking tool in accounting for state  
39 conditions, including, but not limited to, high-density occupancies, use of  
40 steam, large building size and specific high-energy uses such as data  
41 centers, television studios and trading floors; and

42 (6) such other information and analysis as the secretary deems  
43 appropriate.

- 1 (b) The secretary of health and environment may promulgate rules
- 2 and regulations necessary to carry out the provisions of this act.
- 3 Sec. 5. This act shall take effect and be in force from and after its
- 4 publication in the statute book.