HOUSE . . . . . No. 4227

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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:

SECTION 1. Section 335 of Chapter 164 of the Acts of 1997 is hereby amended by striking in line 2 the following words "installed prior to July 1 1997".

SECTION 2. Section 1F of chapter 164 is hereby amended by inserting at the end thereof the following new paragraphs:—

(10)(a) As used herein the following words shall have the following meanings:— "Energy Monitoring Equipment" means a measuring device or other equipment used to determine energy use. "Energy Monitoring System" means a method of determining the energy use consumed within a dwelling unit with the use of a measuring device. "Measuring Device" means a device used in an energy monitoring system that monitors operating time of energy monitoring equipment.

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

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

(ii) the previous tenant vacated the dwelling unit voluntarily or was evicted from the dwelling unit for nonpayment of rent or for breach of lease or noncompliance with a rental agreement for the dwelling unit; provided however that once a tenant of a dwelling unit has been charged for the use of heat or air conditioning in accordance with this section such dwelling unit shall remain eligible for the imposition of a charge for the use of heat or air conditioning in all subsequent tenancies.

(iii) The department of public utilities approves the energy monitoring system upon a demonstration by the owner that the system results in a reasonable determination of the cost of energy use within a dwelling unit.

(iv) The owner completes a home energy assessment for each dwelling unit and installs all reasonable cost-effective items recommended by the home energy assessor. The department may develop a minimum energy efficiency standard for a dwelling unit to qualify under this section.

(c) The landlord/owner must provide the tenants and prospective tenants with:—

(i) the formula for deriving the costs;

(ii) the actual bill per unit of energy for the tenant's apartment from the utility/vendor;

(iii) total utility costs as well as costs for individual units and common areas within fifteen days of a written request to the landlord/owner;

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

(d) The measuring device must meet the accuracy standards for timing devices as set forth in section 5.55 "Timing Devices" of Handbook of the National Instituted of Standards and Testing (NIST).

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

(f) The tenant may seek dispute resolution regarding billing overcharges meter or energy monitoring system accuracy with the department of public utilities. The department may require testing and inspection of energy monitoring equipment. The department may require testing and inspection of any furnace, appliance, or other equipment used in conjunction with the energy allocation system.

(g) Tenants may not be evicted for nonpayment of utility bills. Nonpayment will constitute a material breach of lease and the tenants may seek a remedy or cure prior to a court hearing.

(h) Landlords must provide tenants a monthly billing statement outlining any charges for heat or air conditioning measured by an energy monitoring system. Any payment on a bill rendered to a tenant in accordance with this section shall not be considered late unless payment is received by the property owner or agent 60 days or more after receipt of the bill by the tenant. Landlords may not charge tenants late fees for any payment that is considered late.

(i) An owner may not charge the tenant of a dwelling unit separately for heat or air conditioning measured by an energy monitoring system unless the system measures only heat or air conditioning that is supplied for the exclusive use of the particular dwelling unit and only to an area within the exclusive possession and control of the tenant of such dwelling unit and does not measure any heat or air conditioning usage for any portion of the common areas or by any other party or dwelling unit. An owner may not charge the tenant of a dwelling unit separately for heat or air conditioning measured by an energy monitoring system unless the tenant has direct control over heating or air conditioning through the use of a thermostat or other device regulating the temperature of that particular dwelling unit.

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

(k) An owner may not charge the tenant separately nor allow tenant to be charged separately for allocated heat or air conditioning usage unless the tenant has signed a written rental agreement that clearly and conspicuously provides for such separate charge and that fully discloses in plain language the details of the energy monitoring system and billing arrangement between the owner and the tenant. Each bill for separately allocated heat or air conditioning usage shall clearly set forth all charges and all other relevant information including but not limited to the current and immediately preceding monitoring system readings and the date of each such reading the amount of heat or air conditioning consumed since the last reading the charge per unit of heat or air conditioning the total charge and the payment due date.

(l) An owner shall allocate the cost of heat to each individual dwelling unit by measuring run time of the energy system in question. For hot water baseboard heating systems the measuring device must also monitor temperature to verify that the water in each unit exceeds a minimum temperature appropriate for that heating system; provided that this requirement does not apply to any system installed prior to January 1998. This temperature monitoring shall be used as an additional quality control check in the billing process to ensure that the tenant is using the energy system when the measuring device so indicates.

(m) The energy monitoring system utilized shall be based on the amount of minutes each unit used based on the measuring device. Only the following additional factors may be utilized in the energy monitoring system:— BTU ratings of applicable energy devices, length of baseboard in each unit and temperature of relevant devices. No portion of the energy monitoring system can

90 be based on any other factor including but not limited to the number of occupants in each unit or
91 the size of each unit.

92 (n) An owner may not shut off or refuse to provide heat to a tenant on the basis that the
93 tenant has not paid a separately allocated heat charge.

94 (o) The owner shall maintain in good working order the heating system to each dwelling
95 unit and any component thereof including any energy monitoring system installed pursuant to
96 this section and to respond in a timely manner to any request by the tenant for the repair of any
97 defect or malfunctioning in such heating system. In the event of any over-charge by the landlord
98 or any violation of the state sanitary code the tenant shall have all rights and remedies provided
99 under law for such overcharges or such violations including but not limited to the rights and
100 remedies provided under Chapters 111, 186 and 239.

101 (p) An owner charging tenants separately for allocated heat or air conditioning usage
102 may not elect to receive electricity or gas service from a competitive retail supplier unless he
103 receives affirmative choice, as defined in section 1F of chapter 164 of the general laws, from two
104 thirds of affected tenants.

105 (q) No charge under this section may be imposed on any tenant residing in public
106 housing.

107 (r) A dwelling unit eligible for Low Income Home Energy Assistance (LIHEAP) is not
108 eligible for the imposition of a charge for the cost of heat or air conditioning pursuant to this
109 section.

110 (s) The department of public utilities and the department of public health shall
111 promulgate regulations as it determines to be necessary to implement this section prior to the
112 installation of any energy monitoring system described under this section.