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

Be it enacted by the Legislature of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

(c) On or before January 1, 2021, the department of health and environment shall establish a central management and implementation team to administer this section.
(1) The CMIT is authorized to:
(A) take all appropriate measures to ensure the target is met;
(B) direct affected state entities to comply with the requirements of this section; and
(C) provide strategic, technical and other assistance to each affected state entity to support implementation of this section.
(2) The CMIT shall:
(A) on or before April 1, 2021, create guidelines to assist affected state entities in complying with this section, including a scoring system for energy use and a determination of a threshold to identify buildings that shall be required to undertake an audit, and shall update such guidelines as necessary;
(B) on or before July 1, 2021, develop annual milestones for achieving the energy reduction target and develop and implement reporting requirements to document each affected state entity's progress toward meeting the energy reduction target;
(C) on or before July 1, 2022, develop a comprehensive operations and maintenance plan for the state's building portfolio to help achieve no-cost and low-cost efficiency improvements and ensure that efficiency savings are sustained; and
(D) on or before January 15 of each year, submit an annual report to the governor and the legislature detailing the progress that affected state entities are making toward meeting the target.
(3) Any state agency with oversight on energy initiatives is hereby directed to provide technical assistance to the CMIT and each of the affected state entities with respect to complying with and implementing the requirements of this section and the guidelines established by the CMIT pursuant to this section.
(d) In addition to the requirements established above, each of the affected state entities shall comply with the following:
(1) In each fiscal year, each affected state entity shall measure, using the methods established in the guidelines, the energy use in any state-owned, operated or leased building having an area greater than 20,000 square feet. Buildings on master-metered campuses shall be benchmarked at the campus level until they are sub-metered at the building level, after which such buildings shall be benchmarked at the building level.
(2) Buildings that receive low benchmark scores, as defined by the guidelines, shall undergo an American society of heating, refrigeration and air-conditioning engineers (ASHRAE) level II energy audit, or any comparable audit that the CMIT approves. Campuses that have above-average EUIs or poor benchmark scores, as defined by the guidelines or are otherwise prioritized by the affected state entities and the CMIT, shall undergo a campus-wide ASHRAE level II energy audit or any comparable
audit that the CMIT approves. In addition to energy efficiency measures, the audit shall identify opportunities for cost-effective on-site renewable generation and high-efficiency combined heat and power.

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

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

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

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

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

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

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

(3) "Covered building" means:

(A) (i) Any building in this state that exceeds 50,000 gross square
feet; or
(ii) two or more buildings on the same tract, lot or piece of real estate
for tax purposes that together exceed 100,000 gross square feet; or
(iii) two or more buildings held in the condominium form of
ownership that are governed by the same board of managers and that,
together, exceed 100,000 gross square feet; and
(B) "covered building" does not mean any building that is owned,
operated or leased by any affected state entity, as defined in section 2, and
amendments thereto.
(4) "Data center" means a room or rooms used primarily to house
high-density computing equipment, such as server racks, used for data
storage and processing.
(5) "Dwelling unit" means a single unit consisting of one or more
habitable rooms, occupied or arranged to be occupied as a unit separate
from all other units within a building and used primarily for residential
purposes but not primarily for professional or commercial purposes.
(6) "Energy" means electricity, natural gas, fuel oil and steam.
(7) "Owner" means the owner of record, including:
(A) The net lessee in the case of a building subject to a net lease with
a term of at least 49 years, inclusive of all renewal options;
(B) the board of managers in the case of a condominium; and
(C) the board of directors in the case of a cooperative apartment
corporation.
(8) "Tenant" means any tenant, tenant-stockholder of a cooperative
apartment corporation, condominium unit owner or other occupant.
(b) On and after May 1, 2022, each utility shall maintain records of
the energy usage data of all covered buildings to which they provide
service for at least the most recent 12 complete calendar months.
(1) Where a covered building has five or more individually metered
dwelling units, each utility shall deliver to the owner information showing
the aggregated energy usage data of all utility customers in the same
building for each of the 12 prior months.
(2) Each utility shall deliver to the owner of a covered building,
upload to the benchmarking tool or otherwise provide aggregated energy
usage data within four weeks of receiving a request from an owner,
owner's agent or operator of a covered building.
(3) Notwithstanding any other law, energy usage data aggregated in
this manner shall not be deemed customer utility usage information or
confidential information by the utility for purposes of delivery to the
owner, owner's agent or operator of a covered building.
(4) The owner and utility shall not have any liability for any use or
disclosure by others of aggregated energy usage data delivered as required
by this section.
(5) Each utility shall make available the covered building energy usage data aggregated at a monthly level unless otherwise specified by the secretary of health and environment.

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

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

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

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

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

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

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

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

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

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

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

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

(f) The secretary of health and environment shall:

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

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

(3) Make information available regarding the owners of covered
buildings for which no benchmarking information was generated by the
benchmarking tool.
(g) The secretary of health and environment shall make information generated by the benchmarking tool available to the public on the internet not later than September 1, 2022, and not later than every September 1 thereafter for covered buildings whose primary use is residential. Such information shall include, but not be limited to:

(1) The energy utilization index;
(2) the water use per gross square foot, if required;
(3) where available, a rating that compares the energy and water use of the building to that of similar buildings; and
(4) a comparison of data across calendar years for any years such building was benchmarked. Covered buildings shall not have information generated by the benchmarking tool publicly disclosed during the first year of benchmarking. Covered buildings whose primary use is residential shall not have information generated by the benchmarking tool publicly disclosed during the first two years after enactment.

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

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

(1) The energy and water efficiency of buildings covered by this act;
(2) the accuracy of benchmarked data and whether there is a need to train or certify individuals who benchmark;
(3) compliance with the requirements of this act;
(4) any administrative or legislative recommendations for strengthening the administration and enforcement of this act;
(5) the effectiveness of the benchmarking tool in accounting for state conditions, including, but not limited to, high-density occupancies, use of steam, large building size and specific high-energy uses such as data centers, television studios and trading floors; and
(6) such other information and analysis as the secretary deems appropriate.
(b) The secretary of health and environment may promulgate rules and regulations necessary to carry out the provisions of this act.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.