

The Push for a Greener Philadelphia: City Adopts New Energy Benchmarking Requirements for Owners of Large Commercial Buildings

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In August 2012, the mayor of Philadelphia signed into law Bill 120428-A, which establishes new energy benchmarking requirements for owners of certain large commercial and mixed-use buildings. The energy benchmarking bill requires owners of “covered buildings” to report and disclose data annually related to energy and water usage and other building characteristics.¹ Covered buildings include any commercial building with at least 50,000 square feet, and all commercial portions of any mixed-use building where at least 50,000 square feet of the building is devoted to commercial use.

The energy benchmarking bill represents the city's latest effort to make Philadelphia one of the greenest cities in America, and mandates owners of covered buildings participate in helping the city reach this goal. Philadelphia joins the ranks of at least five other cities, among them New York, Washington and San Francisco, to adopt this kind of energy benchmarking legislation. Similar to other cities' benchmarking measures, the energy benchmarking bill is designed to create awareness and transparency with regard to energy and water consumption and encourage more energy-efficient practices among owners of large commercial buildings.

To track and assess covered buildings' energy and water consumption, owners of covered buildings must submit the required data to the Portfolio Manager database, which

is accessed through a free, Internet-based application developed by the U.S. Environmental Protection Agency. The Portfolio Manager will provide a rating of the building's energy performance on a scale of 1-100 based on the data entered for the building. The rating will reflect the building's percentile rank as compared to similar buildings. The energy benchmarking bill includes a mandatory disclosure provision, requiring owners of covered buildings to provide a statement of energy performance to prospective purchasers or tenants upon request.

Energy Benchmarking Compliance Checklist

Owners of covered buildings should do the following to ensure compliance with the new benchmarking bill:

Register to use the EPA's Portfolio Manager database application. The application can be accessed at <https://www.energystar.gov/istar/pmpam/>.

By June 30 of each year, upload the building's energy and water usage data and building characteristics from the previous calendar year onto the Portfolio Manager database. As an alternative, owners of covered buildings may arrange for utility companies to submit energy and water consumption data to the Portfolio Manager, but owners still will be required to submit building characteristics data.

Between February 1 and February 28 of each year, request any information necessary from any tenant to comply with the benchmarking requirements. The energy benchmarking bill requires tenants to provide the requested information by

¹ Building characteristics that should be reported include, but not limited to, building street address, year built, type of use, gross floor area, operating hours and, as applicable, percent of building area heated and air conditioned, number of computers, uninterruptible power supply usage and characteristics, and number of refrigeration/freezer units.

March 15. However, a tenant's failure to report any required information will not necessarily relieve its landlord of the obligation to meet the benchmarking requirements.²

The first benchmarking submission is due on **June 30, 2013** for data pertaining to the 2012 calendar year. Owners who fail to comply with the ordinance will be subject to fines of \$300 after the first 30 days of non-compliance, and \$100 per day for each day thereafter.

Special Considerations in the Purchase, Sale and Leasing of Property

The energy benchmarking bill's mandatory disclosure requirements will impact the purchase, sale and leasing of covered buildings. Each covered building's energy performance and characteristics now will be out in the open and will inform purchasers' and tenants' investment decisions.

The owner of a covered building must address these new imperatives:

- The owner must provide all reported information on the building's energy and water usage to prospective purchasers and tenants who request this information.

- Each new lease should require the tenant to provide information to the owner regarding the tenant's energy and water usage, to enable the owner to comply with the owner's own, building-wide reporting requirements.
- Existing leases should be reviewed to determine if the information required under the energy benchmarking bill can be obtained under an existing provision or if an amendment to the lease will be required to obtain such information.
- Purchasers and tenants of covered buildings should require the owner to provide its reported energy and water usage reports as part of their due diligence process.

If you are the owner or tenant of a covered building, or are considering the sale, acquisition or lease of a covered building, please contact us. Cozen O'Connor's real estate attorneys can help you plan your compliance efforts with the new energy benchmarking bill and fully guide you through the process.

² If a tenant refuses to provide its landlord with the requested information, and the owner cannot lawfully obtain the information otherwise, the owner will not be required to report such information.