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Model Benchmarking & Transparency Law



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Introduction

This document presents sample language that can be used by jurisdictions (cities, counties, or states) interested in adopting an existing building benchmarking policy. The model language is based on best practices identified while working with many jurisdictions that have enacted successful policies. Policymakers can customize the model language to meet the unique needs of their location. Annotated discussion sections describe the rationale behind some of the recommendations and to provide additional background on some of the decision points. The model law was originally developed by IMT and NRDC for the City Energy Project in 2019 and was comprehensively updated and republished by IMT in 2026.

Policy framework

The model language applies annual requirements for building benchmarking, reporting, and transparency to a broad swath of public and privately-owned buildings within a geographic area. Benchmarking is an important stand-alone policy that provides transparency into building energy use and enables better energy management. It provides a clear framework for standardizing and sharing that data. Complementary policies which go beyond benchmarking are covered in separate model laws. For example, benchmarking policies are more effective if there is a requirement for utilities to share the necessary aggregated whole-building data, as covered in IMT's Model Utility Data Access Law. This utility data access law is designed to be passed at the state level. Passing utility data access before or in parallel with a benchmarking law can make compliance simpler, but is not required.

Using this resource

Developing a building benchmarking policy that is responsive to local conditions and concerns can be a demanding process requiring extensive engagement with stakeholders. Jurisdiction staff will have to make many decisions. IMT's City Energy Project (CEP) developed a separate resource, Creating A High-Impact Building Performance Policy: A Decision Framework For Local Governments, to provide guidance on the key considerations for developing a building performance policy. It presents a framework for collecting input and ultimately resolving these issues. Canadian jurisdictions should also consult standard CSA Z5040:26, GHG emissions, energy, and water reporting for existing buildings.

Once the framework has been completed and vetted, the model language in this document provides the template for transforming those decisions into an enforceable legislation. The detail in this model law is designed to be self-executing without additional regulations. However, the implementing Department will need to issue guidance documents and forms to support compliance. Wherever possible, jurisdictional guidance for benchmarking should align with and reference ENERGY STAR® Portfolio Manager® resources, definitions, and technical guidance.

As every jurisdiction is unique, it is highly unlikely that any jurisdiction would opt to include all of the provisions of this model language as written. Where appropriate, the model language includes initial recommendations for dates, sizes, or other values, shown within [brackets]. Local jurisdictions will likely need to adapt the model language, and modify many of these bracketed values, to reflect the decisions that they documented in their completed Policy Decisions Framework.

Section A: Definitions

Discussion:

Each jurisdiction should endeavor to align definitions with those already used in its laws and rules.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this section unless context indicates otherwise.

(1) "Aggregated, whole-building data" means energy or water data that has been summed for an entire PROPERTY, which may include a single occupant or a group of separately metered tenants.

(2) "Anonymized data" means data that does not reveal names, addresses or any other information that would identify an individual or business.

(3) "Baseline year" means, for any individual PROPERTY, the first calendar year such PROPERTY is required to benchmark.

(4) "Benchmark" means to input and submit the total energy and water consumed for a PROPERTY for the previous calendar year and other descriptive information for such property as required by the BENCHMARKING TOOL. Total energy and water consumption shall not include separately metered uses that are not integral to building operations, as determined by the DIRECTOR.

(5) "Benchmarking submission" means a subset of:

(a) Information input into the BENCHMARKING TOOL; and
(b) Benchmarking information generated by the BENCHMARKING TOOL, as determined by the DIRECTOR.

(6) "Benchmarking tool" means the U.S. Federal Government's ENERGY STAR® Portfolio Manager® web-based tool, or any additional or alternative tool adopted by the DIRECTOR, used to track and assess the energy and water use of certain properties relative to similar properties.

Discussion*:*

ENERGY STAR® Portfolio Manager® is a free online tool that is used to benchmark nearly 25% of all commercial floor area in the U.S. It serves as the reporting platform for virtually every energy benchmarking law. The inclusion of "or any additional or alternative tool" gives the jurisdiction flexibility in the event of temporary or long-term service disruptions.

(7) "Condominium" means a property that combines separate ownership of individual units with common ownership of other elements such as common areas.

(8) "Covered [city/county/state] property" means any PROPERTY with at least [25,000] square feet of GROSS FLOOR AREA, and owned, leased, or managed by the [city/county/state] such that the [city/county/state] regularly pays all or part of the annual energy and/or water bills.

Discussion:

The term "[city/county/state] property" is used rather than "public property" or "government property" to highlight that a city ordinance does not have jurisdiction over county, state, or federally owned properties. A state law could have jurisdiction over city and county properties but would still not apply to federally-owned properties. Though those properties will not be covered by this law, jurisdictions can work with other public authorities to encourage them to voluntarily comply with these requirements.

Many governments have established a lower size threshold for benchmarking of government properties than for privately owned properties, with some going as small as 10,000 square feet. Setting a lower threshold for the government properties creates a positive example, and allows the jurisdiction to get a better understanding of how its smaller properties are performing.

This definition is written to ensure that properties where the government is the primary tenant would be subject to the same requirements as those owned by the government.

(9) "Covered property" means any PROPERTY with at least [25,000] square feet of GROSS FLOOR AREA.

EXCEPTIONS:

The following properties are not considered to be covered properties, and are not subject to any of the requirements of this chapter:

(a) Single family, duplex, triplex and fourplex residential homes and related accessory structures, or any other residential building with less than 5 units;
(b) Manufacturing facilities and industrial plants designated Standard Industrial Classification (SIC) codes 2000 through 3990;
(c) Properties owned by government bodies not subject to the authority of this law;
(d) Other building types not meeting the purpose of this Chapter, as determined by the Director.

Discussion:

Some jurisdictions have chosen to exclude certain types of buildings, such as industrial buildings, based upon their use. Exceptions based on the use of a property should refer to the categories defined in the local building codes, SIC or NAICS codes, or other authoritative source. Zoning should not be used, as many buildings that should be covered may be zoned as industrial or have a nonconforming use. The text as written does not exclude data centers; jurisdictions are increasingly including data centers in benchmarking and transparency requirements.

(10)"Department" means the [agency/department overseeing administration of the law].

(11)"Director" means the Director of the [agency/department overseeing administration of the law].

Discussion:

"Director" is the term used in this model law. However, each jurisdiction must determine the appropriate individual or group that will be responsible for oversight. Director can be replaced by "agency," "department," "mayor," "commissioner," or another option that makes the most sense for that particular jurisdiction.

(12)"District energy system" means a system serving multiple COVERED PROPERTIES and consisting of thermal energy generation, transfer, and distribution equipment providing thermal energy in the form of heat and/or heat rejection.

(13)"Energy" means electricity, natural gas, steam, or other product sold by a UTILITY to a customer of a property, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses as recorded in the BENCHMARKING TOOL.

(14)"ENERGY STAR Score" means a 1-100 numeric rating generated by the BENCHMARKING TOOL as a measurement of a building's energy efficiency.

(15)"Financial hardship" (of a property) means that a property:

(a) Had arrears of property taxes or water or wastewater charges that resulted in the property's inclusion, within the prior two years, on the government's annual tax lien sale list; or
(b) Has a court appointed or administrative receiver in control of the asset due to financial distress; or
(c) Is owned by a financial institution through default or bankruptcy by the borrower; or
(d) Has been acquired by a deed in lieu of foreclosure; or
(e) Has a senior mortgage subject to a notice of default.

(16) "Gross floor area" means the total area of a COVERED PROPERTY, measured between the outside surface of the exterior walls of the building(s). The DEPARTMENT shall publish guidance governing the calculation of GROSS FLOOR AREA, including areas that shall be excluded from the calculation.

Discussion:

This definition of gross floor area is consistent with the way the term is defined by ENERGY STAR Portfolio Manager. It may be defined differently if the term is used elsewhere in statutes, so it is important to verify that there is no conflict or ambiguity in how this term is being interpreted.

(17)"Owner" means any of the following:

(a) An individual or entity possessing title to a COVERED PROPERTY;
(b) The board of the owners' association, in the case of a CONDOMINIUM;
(c) The master association, in the case of a CONDOMINIUM where the powers of an owners' association are exercised by or delegated to a master association;
(d) The board of directors, in the case of a cooperative apartment corporation; or
(e) An agent authorized to act on behalf of any of the above.

***Discussion**:*

All potential use cases are included under this definition, so that the term owner can be used generically throughout the remainder of the law without having to call out special cases.

(18)"Property" means any of the following:

(a) A single building;
(b) One or more buildings held in the CONDOMINIUM form of ownership, and governed by a single board of managers; or
(c) A campus of two or more buildings on the same or adjacent lots which are owned and operated by the same party, have a single shared primary function, and are:

1. Behind a common utility meter or served by a common mechanical/electrical systems or district energy systems which would prevent the owner from being able to easily determine the energy use attributable to each of the individual buildings; or
2. Used primarily for one of the following functions:

    a. K-12 school
    b. Hospital
    c. Hotel
    d. Multifamily housing
    e. Senior care community

***Discussion**:*

In some cases, multiple buildings with separate energy meters share a single water meter. If your jurisdiction has such cases, then decide whether to write item c, above, in your law to treat such cases as a single COVERED PROPERTY, or to leave the question for rulemaking.

While buildings that fall under item c.1—such as an office park or a university campus—may be treated as a campus for benchmarking purposes, the buildings under item c.2 must be benchmarked as a campus to receive a valid ENERGY STAR Score. As defined here, the term property may refer to either a single building or a collection of buildings, depending on the situation. To consistently maintain this perspective, the term "property" is used throughout this law rather than "building."

(19) "Shared benchmarking information" means information generated by the BENCHMARKING TOOL and descriptive information about the physical PROPERTY and its operational characteristics, which is shared with the public. The information, as defined by the BENCHMARKING TOOL, shall include, but need not be limited to:

(a) Descriptive information, including:
    1. Property address
    2. Primary use;
    3. Gross floor area;

4. Number of residential units;
5. Occupancy rate; and
6. Individual or entity responsible for the benchmarking submission.

(b) Output information, including:

1. Site and source energy use intensity;
2. Weather-normalized site and source energy use intensity;
3. The ENERGY STAR Score, where available;
4. Total annual greenhouse gas emissions;
5. Greenhouse gas emissions intensity;
6. Monthly energy use, by fuel type;
7. Monthly peak electricity demand, where available;
8. Indoor water use and water use intensity (consumption per gross square foot);
9. Outdoor water use, where available;
10. The Water Score, where available; and
11. Specialized energy performance metrics for specific building types, such as Power Use Effectiveness, where applicable and specified by the Director.

(c) General comments section, if needed, and

(d) Compliance or noncompliance status.

Discussion:

Shared benchmarking information is a subset of the benchmarking submission information reported to the jurisdiction. Collecting and sharing the greenhouse gas metric is encouraged if the jurisdiction does not have more accurate, localized figures on greenhouse gas (GHG) emissions. Governments should evaluate the accuracy of the output generated by Portfolio Manager for their individual jurisdiction, as the EPA uses regional coefficients to calculate greenhouse gases and the results do not always reflect localized conditions. For some building types, ENERGY STAR recommends a different performance metric—notably, power use effectiveness (PUE) for data centers, and energy use per volume of water flow for drinking water and wastewater treatment plants. These alternate metrics should be collected and disclosed for applicable building types.

(20) "Space" means an area within a building enclosed by floor to ceiling walls, partitions, windows and doors.

(21) "Tenant" means a person or entity occupying or holding possession of a building, part of a building or premises pursuant to a rental or lease agreement;

(22) "Utility" means an entity that distributes and/or sells natural gas, electric, water, or thermal energy services for buildings.

Section B: Collecting and entering benchmarking data

(1) Each year the owner of each covered property shall collect and enter all data needed to benchmark the entire property for the previous calendar year into the benchmarking tool, in a manner that conforms to latest guidance provided by the U.S. Environmental Protection Agency for use of the tool. Aggregated whole-building data for the property's energy and water use shall be compiled using one or more of the following methods:

(a) Obtaining aggregated whole-building data from a utility.
(b) Collecting data from all tenants.
(c) Reading a master meter.

Discussion:

Ideally, the local utility will be set up to upload aggregated whole-building data to the owner's account on a regular, recurring basis. See the IMT City Energy Project resource, Engage with Utilities to Implement Energy Performance Policies.

States or other jurisdictions with authority over energy utilities may wish to pair adoption of this law with adoption of IMT's Model Utility Data Access Law. Passing utility data access before or in parallel with a benchmarking law can make compliance simpler, but is not required

(2) If the owner of a covered property does not have access to aggregated whole-building energy and water data, such property owner shall request aggregated whole-building data from each utility that provides energy or water service to the property. When a utility does not provide aggregated whole-building energy or water data, the owner of a covered property shall request energy and water data from tenants as per the provisions in the remainder of this section.

(3) Each nonresidential tenant located in a covered property shall, within 30 days of a request by the owner, and in a form to be determined by the Director, provide all information that cannot otherwise be acquired by the owner and that is needed by the owner to comply with the requirements of this law.

Discussion:

This provision refers to both energy consumption and operational characteristics (e.g., number of employees or computers) that an owner may not be able to easily determine. In practice, this provision should have limited applicability.

Owners of buildings with tenants often have difficulty benchmarking because they may not know all of the space-use characteristics of their tenant spaces and, if their tenants are individually metered, they won't have access to their energy consumption. This provision requires commercial tenants to provide the property owner with the energy consumption and space use characteristics required to benchmark.

(4) When the owner of a covered property receives notice that a nonresidential tenant intends to vacate a space within such property, and the utilities do not provide aggregated whole-building energy and water data, the owner shall request information relating to such tenant's energy and water use for any period of occupancy relevant to the owner's obligation to benchmark. Such tenant shall report such information to the owner of the covered property within 30 days of a request by the owner.

(5) Nothing in this Chapter shall be construed to permit a property owner to use tenant energy usage data for purposes other than compliance with benchmarking report requirements, nor shall the reporting requirements of this Chapter be construed to excuse property owners from compliance with federal or state laws governing direct access to tenant utility data from the responsible utility.

(6) When a covered property changes ownership, the previous owner shall provide the new owner with all information needed to benchmark for the period during which the previous owner was in possession of the property.

Section C: Benchmarking reporting

(1) For every covered property subject to this chapter, the owner shall annually submit to the Director an energy and water benchmarking report in an electronic format as established by the Director, by the date specified in Section D: Benchmarking Schedule.

Discussion:

This provision requires the benchmarking data for each covered property to be electronically submitted to the government, using Portfolio Manager. Each government will need to select the fields from Portfolio Manager that they would like to collect, and create a custom reporting template that includes these field definitions. Owners will then be able to select the jurisdiction's template from a dropdown menu within Portfolio Manager and submit their data to the government.

(2) The information included in the annual energy and water benchmarking report shall include, at a minimum, the shared benchmarking information, as defined in Section A (19), for the previous calendar year.

***Discussion**:*

The fields that can be collected in Portfolio Manager are continually updated, and it is difficult to predict which fields will ultimately be of greatest value to the market and to researchers. Therefore, to maintain flexibility, the list of data fields to be collected each year should, where possible, be defined in guidance documents rather than in the law.

(3) The owner of each covered property shall enter data into the benchmarking tool such that the energy and water benchmarking report shall be based on an assessment of the aggregated total energy and water consumed by the whole property for the entire calendar year being reported.

(4) Before submitting a benchmarking report the owner shall run all automated data quality checker functions available within the benchmarking tool and shall verify that all data has been accurately entered into the tool. In order for the benchmarking report to be considered in compliance with this law, the owner shall correct all missing or incorrect information as identified by the data quality checker prior to submitting the benchmarking report to the Director.

Discussion:

Portfolio Manager includes a number of automated checks, which can flag possible typos, incorrect meter readings, missing information, incorrect units of measure, and other common data entry problems. Although the checker is an automated function, it must be manually initiated by the user. The provision above should be included to reduce administrative errors.

Optionally, a jurisdiction may also require regular third-party verification of the data, as discussed in Section F below.

(5) Where the current owner learns that any information reported as part of the benchmarking submission is inaccurate or incomplete, the owner shall amend the information reported within the benchmarking tool, and shall provide the Director with an updated benchmarking submission within 30 days of learning of the inaccuracy.

(6) [Utilities providing energy or water service to a covered property shall maintain aggregated whole-building data for each property for at least the most recent 24 months in an electronic format capable of being uploaded to the benchmarking tool.]

Discussion:

The provision above requires utilities to maintain historical energy and water consumption data for properties in their service territories that are required to benchmark. This provision will be enforceable only to the extent that the given government has authority to regulate utilities—for city and county governments this is typically only municipally owned utilities, while state governments may have authority to regulate all utilities but may need to work with the state utilities commission for details and enforcement. For more on this, see IMT's Model Utility Data Access Law.

Section D: Benchmarking schedule

(1) The owner of a covered property shall ensure that for each such property a benchmarking report is generated, completed, and submitted to the Director annually.

(2) The initial benchmarking reports for each covered property shall be filed in accordance with the schedule in the following table. Subsequent benchmarking reports for each covered property shall be due by [May 1] of each year thereafter.

Discussion:

For simplicity and faster roll-out, this schedule phases in buildings by size, with the largest buildings reporting first and then the medium-size buildings phasing in a year later. City/county/state properties of all sizes should start benchmarking and reporting a year before the large buildings, so that the jurisdictions leads by example. Private covered buildings begin a year later, in two phases by building size. However, to simplify roll-out, some jurisdictions have started requirements for public and private

buildings at the same time. An alternate, gentler roll-out is to phase in commercial buildings a year before residential properties (with any mixed-use buildings reporting under the residential timeline). This can reduce administrative burden the first year and may be useful in scenarios where a utility does not yet provide aggregated whole-building data access for residential meters.

The earliest possible compliance date within the year is recommended so that building owners and managers get rapid feedback. Generally, the previous year's energy data is not available from the utility until the end of February, as it takes time to process the final billing cycle of the previous year. May is recommended as it provides enough time to collect and report data, and get the data verified, if applicable.

Covered Property Size	Initial Reporting Date
Covered [city/state/county] properties	[May 1, 2028]
All Covered properties ≥ [50,000] sq. ft.	[May 1, 2029]
All Covered properties ≥ [25,000] sq. ft.	[May 1, 2030]

(3) The Director shall annually make available on a publicly accessible website the shared benchmarking information, as defined in Section A (19), for the previous calendar year for each covered property.

Discussion:

The annual publication of benchmarking information for each covered property begins with the second year that that property reports to the government. This delay provides building owners with a one-year window to improve their property's energy performance before it becomes public, and allows the government to identify methods to improve data quality and compliance, if necessary.

(4) The shared benchmarking information for each covered property shall first be made available to the public beginning the year after each such property is first required to submit a benchmarking report.

(5) The Director will determine if any benchmarking shared summary data shall be excluded from publishing because it is not in the public interest.

Discussion:

This provision provides the Director with the authority to address specific, definable stakeholder concerns regarding data privacy.

Section E: Benchmarking exemptions and time extensions

(1) Benchmarking is not required for a covered property for the current reporting year if the owner submits documentation to the Director, in such form and with such certifications as required by the Director, establishing that the property met one or more of the following conditions for the calendar year to be benchmarked:

(a) The property did not have a Certificate of Occupancy or temporary Certificate of Occupancy for that full year;
(a) A demolition permit for the entire building was issued during that year, provided that demolition work commenced and legal occupancy was no longer possible prior to end of that year;
(b) The property did not receive energy or water utility services for at least 30 days during that year;

(c) Due to special circumstances unique to the property, strict compliance with provisions of this law would not be in the public interest.
(d) Due to special circumstances specific to the applicant's facility and not based on a condition caused by actions of the applicant, strict compliance with provisions of this law would cause undue hardship or not be in the public interest;
(e) The property is under financial hardship; or
(f) More than [50%] of gross floor area is used for residential purposes; and:

1. More than [four] meters are associated with the property; and
2. The owner documents that despite its best efforts it is not able to obtain whole-building data; and
3. The serving electric utility does not provide access to aggregated whole-building data. Once such services are available from the utility, as determined by the Director, such properties will no longer be exempt from benchmarking requirements, and shall file initial benchmarking reports in the first required reporting year following such data availability.

***Discussion*:**

The above list includes most types of exemptions that have been considered by jurisdictions. For example, properties that are facing financial hardship would likely not be able to afford pursuing any significant energy efficiency upgrades. Therefore, it is recommended that these properties be exempt from complying until such time they have the financial means to do so. The public interest exemption is intended to be narrowly applied, and give the Director discretion to exempt "sensitive" facilities, such as those related to public security or crisis management and that could be compromised if information about their operations is publicly disclosed. Only those exemptions from this list that are appropriate for local conditions, as based on input from stakeholders, should be included.

(2) Any owner requesting an exemption from benchmarking shall, by March 1 in the year for which the exemption is being requested, submit to the Director any documentation reasonably necessary to substantiate the request or otherwise assist the Director in the exemption determination. Any exemption granted will be limited to the benchmarking submission for which the request was made and does not extend to past or future submittals.

(3) An owner may apply for a time extension to complete and submit a benchmarking report if, despite such owner's good faith efforts, they are unable to complete the required actions prior to the scheduled due date due to the failure of either a utility provider or a tenant (or both) to provide the owner with information needed to complete this report. The owner requesting an extension shall submit to the Director any documentation reasonably necessary to substantiate the request or otherwise assist the Director in the determination. For each property, the Director may grant no more than two such extensions per year of no more than [30] days each.

Section F: Third-Party data verification

(1) Owners shall have their data verified by a third-party certified professional to confirm the accuracy of the shared benchmarking information on a regular basis. This requirement is additional to the requirements for running the benchmarking tool's data quality checker as specified in Section C(4).
(2) Data verification is required before the first submission under this law as specific in Section D(2), and every [5] years thereafter.
(3) Data verification may only be completed by those carrying the following accreditations or certifications:

- Professional engineer; or
- Licensed architect; or
- Certified Energy Manager; and/or
- Other such certifications from an accrediting body recognized in the United States and as published by the Director

(4) Property performance metrics to be verified are all items listed as Shared benchmarking information.

(5) A property that has received an ENERGY STAR Certification using data that included at least six (6) months of the calendar year shall meet the requirements for third-party verification.]

***Discussion**:*

Regular third-party verification of benchmarking data is a best-practice. If the only uses of submitted data by the jurisdiction are publication, analysis, and supporting effective voluntary/incentive programs, this requirement may not be needed. However, if the jurisdiction will implement or enforce any other mandatory requirements based on the benchmarking data, then regular third-party verification on a schedule aligned with such requirements is essential and should be required.

Section G: Notification by the [city/state/county]

(1) By December 1 of each year prior to a year in which benchmarking submissions are due, the Director may publicly post a list of all covered properties that must provide a benchmarking submission to the Director during the following year.

(2) Between January 1 and March 1 of each year, for at least the first three years during which an owner is required to provide a benchmarking submission, the Director shall attempt to notify those owners of their obligation to benchmark and verify if applicable in such year via direct mail, electronically via email, or through a public posting on a web site.

(3) Failure of the Director to notify any owner shall not affect the obligation of such owner to complete and submit their benchmarking.

Discussion:

Although the jurisdiction should make a reasonable effort to attempt to notify all property owners of their obligations under this law, the law should clearly state that even if an owner does not receive formal notification because, for example, the jurisdiction did not have their current contact information, the legal requirements are still in force.

Section O: Sharing of data

(1) The Director may provide non-anonymized data from benchmarking submissions to any utility serving a covered property or to any federal, state, county or city-managed energy efficiency or management program, provided that the data will be used only for purposes of offering programs, services, and incentives related to energy and water efficiency and management, and provided that the Director has first obtained the covered property owner's written or electronic permission to share the data with the utility or energy efficiency and/or management program. Where the property owner's permission can be granted electronically through acceptance of a default option, the [city/county/state] shall provide a clearly delineated option for owners of covered properties to choose to opt out of granting this permission.

Discussion:

Ideally, the owner's approval can be collected through an online check-box where they acknowledge they have read the terms and conditions. In that situation, the jurisdiction should also provide a clearly delineated option for owners of covered buildings to choose to opt out of granting this permission.

(2) The Director may disclose any data from benchmarking submissions, to a third party for academic or other non-commercial research purposes provided that such data is anonymized.

Section P: Annual report and analysis

(1) Beginning no later than [December 1, 2021] and every year thereafter, the Director shall make available on a publicly accessible website an annual report on the benchmarking of all covered properties. The report shall include a summary of energy and water consumption statistics, and an

assessment of compliance rates, accuracy and issues affecting accuracy, changes across the portfolio over time, and trends observed.

Discussion:

The annual benchmarking report should be more detailed the first year that all covered buildings are required to report, and roughly every five years thereafter. During other years the report can be a very high-level summary of two to five pages. However, there are a handful of key metrics (e.g. compliance rates, median EUI and WUI by building type, total energy/water consumed, and total GHG emissions) that should be determined and publicly posted each year, to demonstrate continuity and positive progress from the policy. See IMT's report, "Analyzing Benchmarking Data," for further information.

(2) Nothing in this law shall prevent the Director from including all such information in a combined annual energy and water efficiency report covering the progress of all of the jurisdiction's energy efficiency policies and programs.

Discussion:

This section ensures that the jurisdiction analyzes the progress of benchmarking implementation, and uses the data to identify important trends that could help inform future policies or programs. This type of jurisdiction-wide analysis can provide useful feedback for governments on the implementation, administration and impact of these energy efficiency initiatives. If possible, there should be a single, overall energy efficiency report which covers benchmarking and any other related laws and initiatives; this helps avoid duplication and the combined analysis better demonstrates relationships among the variables.

Section Q: Maintenance of records

(1) Owners shall maintain records as the Director determines is necessary for carrying out the purposes of this law, including but not limited to the energy and water bills and reports or forms received from tenants and/or utilities. Such records shall be preserved for a period of five years. At the request of the Director, such records shall be made available for inspection and audit by the Director.

(2) When a covered property is sold, the records shall be given to the new property owner and the online benchmarking tool records shall be transferred to the new owner.

(3) The Department reserves the right to spot check records as it deems necessary to evaluate the efficacy of this law. Records shall be provided to the Director upon request.

Section S: Violations and enforcement

(1) It shall be unlawful for any entity or person to fail to comply with the requirements of this ordinance or misrepresent any material fact in a document required to be prepared or shared by this ordinance.

Discussion:

The actual penalties that a jurisdiction is able to assess, and the process by which it can do so, will be determined by other portions of the jurisdiction's codes. Therefore, the government's attorney will have significant input in determining the compliance and enforcement provisions of this law.

(2) If the Director determines that a property owner has failed to report benchmarking information as required under this law, or the owner has submitted incomplete or false benchmarking information, the Director may seek the following remedies:

(a) A written warning may be issued for the violation; and
(b) If initial benchmarking information or updated benchmarking information is not reported within 30 days of the date the written warning is issued, the Director may issue a notice of violation with a penalty of up to [$500].

(c) If initial benchmarking information or updated benchmarking information is not reported within 90 days of the date the notice of violation is issued the Director may then and every three months thereafter assess additional penalties of [$1000] for noncompliance.
(d) If the Director determines that a property owner has intentionally submitted false or incomplete information, or has misrepresented the benchmarking information, the Director may issue a notice of violation with a penalty of up to [$2,000]. Each year of non-compliance shall constitute a separate offense punishable upon conviction by a penalty of [$2,000].
(e) If the owner of a covered property subject to this Chapter has been previously been found to be in noncompliance under this Chapter within the past two years, all subsequent violations by that property owner for failing to submit a benchmarking report may be subject to a [$1000] fine in addition to any other penalty imposed under this Chapter.

Discussion:

Since consultants can charge $1,000–$2,500 to benchmark, the total penalty that an owner can incur must be set high enough to exceed that value and discourage non-compliance.

Section T: Additional non-compliance procedures, violations, and enforcement

(1) It shall be unlawful for any entity or person to fail to comply with the requirements of this law or misrepresent any material fact in a document required to be prepared or shared by this law.

(2) Nothing in this Chapter shall obligate the Department or the Director to issue a warning notice of violation or a notice of violation before initiating a civil enforcement action.

(3) A building owner that has not complied with the benchmarking or performance-verification requirements of this law shall be considered to not be in good standing, and, where applicable, shall not receive a renewal of a [rental license]. The jurisdiction may require outstanding violations of this law to be cured prior to reissuing [a certificate of occupancy, building electrical recertification, building structural recertification].

Discussion:

The ability to withhold a certificate of occupancy or other approvals and listings due to non-compliance can provide an effective non-monetary enforcement mechanism, where permissible by law.

(4) Necessary Trust Funds or accounts shall be established by the Department to deposit monies received under this Chapter. Monies collected due to noncompliance under this Chapter shall be allocated to improve the energy and water efficiency of covered properties designated as affordable housing or meeting other criteria as determined by the Director.

Discussion*:*

Some jurisdictions may have restrictions on designating the use of penalties in this way, and may be required to send revenues to a general fund.

Section U: Rules

The Director shall promulgate such rules as deemed necessary to carry out the provisions of this law.

Discussion:

Some jurisdictions have chosen to include additional language stating that if the director finds it necessary to issue new rules beyond those called for in this bill or to amend this law, such rules must be presented to a working group of affected parties and relevant stakeholders, which will be formed prior to amending the law.

Section V: Severability

If any provision, section, subsection, sentence, clause, phrase or other portion of this law is for any reason found or declared to be unconstitutional or otherwise invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining provisions or portions of this law, which remaining portions shall continue in full force and effect and can be implemented without the invalid provisions and, to this end, the provisions of this law are declared to be severable. The [City Council/legislative body] hereby declares that it would have adopted each and every provision and portion thereof not declared invalid or unconstitutional, without regard to whether any portion of the law would subsequently be declared invalid or unconstitutional.

Section W: Timing

This law shall become effective ten (10) days after the date of enactment.