



MASSACHUSETTS ASSOCIATION OF REALTORS®

**Statement of the Massachusetts Association of Realtors® and the
Greater Boston Real Estate Board in Strong Opposition to
Home Energy Scoring and Labeling
S.1839 An Act Relative to Home Energy Efficiency
November 6, 2017**

On behalf the over 23,000 REALTORS® of the Massachusetts Association of REALTORS® (MAR) and 12,000 real estate professionals of the Greater Boston Real Estate Board (GBREB) we wish to express our strong opposition to home energy scoring and labeling, S.1839.

Our members believe that protecting our environment is a priority. GBREB and MAR support sound policies and programs aimed at protecting and conserving energy and our environment. Additionally, we have long supported a property owner's ability to voluntarily obtain an energy inspection of their home through programs such as MassSave.

Our opposition is rooted in provisions that require an energy inspection prior to the sale of an individual's home and the creation and use of a mandatory energy score. Such provisions would add expense, time, and complications to an already complicated transaction without creating any measurable energy efficiency investment in homes. Additionally, the proposed mandatory government energy labeling requirements could have significant negative impacts on homeowners and the housing market across the Commonwealth.

S.1839 would require properties listed for sale in the Commonwealth to have an energy score and label prior to the signing of a contract to purchase. That property home energy labeling system would be developed by the Commonwealth, but the environmental benefit or accuracy cannot be quantified. Labeling homes of people who cannot afford the cost to upgrade or update their home will have a negative impact on the housing market, drive down prices, and will hurt homeowners who cannot afford energy efficiency improvements.

MAR and GBREB oppose these provisions for the following reasons:

- 1. Stigmatized property:** Many of the older homes that would be significantly impacted by this legislation are located in less affluent communities where residents have few resources to upgrade their home. The ratings could cause depressed values of those older homes especially those located in Gateway Cities where residents may not be able to afford the energy upgrades needed for a positive score. However well intended, this new scheme may in fact result in a disparate impact on those with the fewest resources and a widening of the gap between the haves and the have nots in the Commonwealth.
- 2. Impact on home values & private property rights:** The Commonwealth has some of the oldest housing stock in the nation and typically, older homes are not as energy efficient as newer homes. The concept of a government agency inspecting and then labeling or scoring people's homes in terms of energy efficiency is troubling. Requiring an energy audit prior to selling a home will lead to delays in the home buying process. Adding a mandatory inspection

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to the home buying process is counterproductive to encouraging a healthy real estate market and opportunities for home ownership.

3. **Unnecessary and duplicative:** Under existing state law, home inspectors are required to provide consumers information regarding home energy audits at the time of a home inspection (see 266 CMR 6.08). Additionally, the standard contract to purchase produced by MAR includes a provision allowing for a buyer to conduct an energy audit as part of the inspection. These existing alternatives give consumers the choice to voluntarily conduct inspections.
4. **Constitutional issues:** The energy audit provisions would require homeowners to allow third-party entry into their homes for the purpose of conducting the audit. Because it would require third-party entry, the home energy audit mandate raises serious privacy concerns under the Fourth Amendment to the U.S. Constitution. It is noteworthy that in Massachusetts, mandatory inspection of a home at the time of sale or transfer arises in only two contexts: (1) inspection of a property with a septic system for compliance with Title 5; and (2) inspection for compliance with the smoke detector and carbon monoxide alarm requirements of G.L. c. 148, § 26F. In each of these cases, the inspection is justified by public health and safety interests of that dwelling. By contrast, the goal of more energy efficient housing—a goal shared by Realtors®—does not justify the proposed mandatory home energy inspection requirement. Furthermore, from a homeowner's perspective, third party entry for the purpose of conducting a mandatory home energy audit is equivalent an interior inspection of a private home by a government-hired appraiser in connection with a property tax assessment. Such third-party entries have been found to violate a homeowner's privacy rights under the Fourth Amendment on the ground that the governmental interest in accessing a private home and conducting an appraisal inspection is outweighed by the homeowner's Fourth Amendment privacy rights.

Thank you for your time and attention regarding this important matter. We welcome the opportunity to promote energy efficiency practices among homeowners and renters throughout the Commonwealth. We hope to work with all interested parties to better educate homeowners on the benefits of an energy audit rather than solely burdening those interested in buying or selling a home.

We strongly urge the Committee to report this bill out unfavorably. Please do not hesitate to contact us with any questions regarding this important issue for homeowners in Massachusetts.

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