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The Commonwealth of Massachusetts
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Department of Public Health
Center for Environmental Health
Community Sanitation Program
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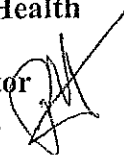
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MAY 11 2005

BOARD OF HEALTH
TEWKSBURY, MA

MEMORANDUM

TO: Massachusetts Local Boards of Health

FROM: Paul Halfmann, Assistant Director
Community Sanitation Program 

DATE: May 2, 2005

RE: Submetering of Water Revisions to 105 CMR 410.000

On December 16, 2004, the Governor signed Chapter 417 of the Acts of 2004, entitled *An Act Authorizing Water Submetering in Residential Tenancies* (hereafter referred to as the "Act"). This Act became effective March 16, 2005. The Act, codified as M.G.L. c. 186, §22, authorizes landlords of residential property to separately charge tenants for actual water and sewer service costs provided that all of the comprehensive requirements of the Act are met. Among its many specific provisions, the Act:

- Prohibits water submetering unless the dwelling unit is separately submetered or, for single-family rentals, the water usage is under the complete control of the tenant, to ensure that tenants are only charged for water actually used;
- Requires landlords to have licensed plumbers install any water submetering devices at the expense of the landlord;
- Requires landlords to certify in writing to the local Board of Health that the dwelling unit is in compliance with the requirements of the Act prior to separately charging for water or sewer service and to have a written agreement with tenants;
- Requires water conservation devices on all showerheads, sinks and toilets, at the landlord's expense, prior to separately charging for water or sewer service;
- Permits water submetering only in new tenancies created after the effective date of the Act, except that water submetering is not permitted in public housing dwelling units;

- Provides a process for tenants to report leaks, contest bills, and question the accuracy of water submeters and to only pay for water costs resulting from actual use;
- Requires landlords to remain as the water company customer and to be responsible for payment of water supplied by the water company;
- Prohibits landlords from shutting off water to a residential dwelling for non-payment of water or sewer costs but permits landlords to pursue all other legal remedies to collect bills, including deducting unpaid bills from security deposits;
- Authorizes the Department of Public Health to promulgate such additional regulations to the state sanitary code as it determines to be necessary to implement this section.

Enclosed you will find a copy of the revised regulations, 105 CMR 410.000, and the SUBMETERING OF WATER AND SEWER CERTIFICATION FORM. Any landlord planning to charge tenants for the use of water and sewer must use the certification form attached.

The Community Sanitation Program is in the process of placing the certification form and revised regulations on our website, <http://www.mass.gov/dph/dcs/dcs.htm>. A copy of M.G.L. c. 186, §22 may be downloaded by visiting, <http://www.mass.gov/legis/laws/mgl/186-22.htm>.

105 CMR: DEPARTMENT OF PUBLIC HEALTH

410.354: Metering of Electricity, Gas and Water

- (A) The owner shall provide the electricity and gas used in each dwelling unit unless
- (1) Such gas or electricity is metered through a meter which serves only the dwelling unit or other area under the exclusive use of an occupant of that dwelling unit, except as allowed by 105 CMR 410.254(B); and
 - (2) A written letting agreement provides for payment by the occupant.
- (B) If the owner is required, by 105 CMR 410.000 or by a written letting agreement consistent with 105 CMR 410.000, to pay for the electricity or gas used in a dwelling unit, then such electricity or gas may be metered through meters which serve more than one dwelling unit.
- (C) If the owner is not required to pay for the electricity or gas used in a dwelling unit, then the owner shall install and maintain wiring and piping so that any such electricity or gas used in the dwelling unit is metered through meters which serve only such dwelling unit, except as allowed by 105 CMR 410.254(B).
- (D) If the owner intends to separately bill the occupant for water or sewer services in accordance with the provisions of M.G.L. c. 186, § 22, then the owner must be in compliance with all requirements of M.G.L. c. 186, § 22, including, but not limited to:
- (1) Installing and maintaining, when necessary, a water submetering device that measures only water 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 occupant of such dwelling unit;
 - (2) Installing, or causing to be installed, water conservation devices on all showers, faucets, and toilets in the dwelling unit;
 - (3) Having a written letting agreement with the occupant that describes the details of the water submetering and water billing arrangements; and
 - (4) Filing a certificate, on a form provided by the Department of Public Health, with the Board of Health or other appropriate municipal agency charged with enforcing the State Sanitary Code, and signed by the owner under the pains and penalties of perjury, that the dwelling unit is in compliance with M.G.L. c. 186, § 22. The owner shall have a licensed plumber sign the certificate certifying that the water submetering devices and ultra-low-flush toilets have been installed in accordance with accepted plumbing standards and the requirements of M.G.L. c. 186, § 22, and shall attach appropriate documentation to verify the services provided by the licensed plumber. The owner shall also provide a copy of the certificate to the occupants of each dwelling unit with the written letting agreement that describes the details of the water submetering and water billing arrangements.
- (E) The owner shall allow occupants to have access to any water submeters that affect their dwelling unit in order to ensure that such submeters are functioning properly.

410.355: Provision of Oil

The owner shall provide the oil used for heating and/or hot water in each dwelling unit unless such oil is provided through a separate oil tank which serves only that dwelling unit, provided however, that 105 CMR 410.000 shall only apply to tenancies created or renewed after July 1, 1994.

**MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH
SUBMETERING OF WATER AND SEWER CERTIFICATION FORM**

In accordance with M.G.L. c. 186, § 22 and 105 CMR 410.000: Minimum Standards of Fitness for Human Habitation (State Sanitary Code Chapter II), the following dwelling unit is eligible for the imposition on the tenants of a charge for water and/or sewer service.

PROPERTY INFORMATION		
Address:	Unit #	# Of units in bldg.
City/Town:	MA	Zip Code:
EQUIPMENT INSTALLATION INFORMATION		
105 CMR 410.000 requires the installation of water conservation devices prior to a dwelling unit becoming eligible for the imposition on tenants of a charge for water and/or sewer. The devices must meet the following specifications:		
Showerheads with maximum flow rate not to exceed	2 ½ gallons per minute (2.5 gpm)	
Faucets with maximum flow rate not to exceed	2 2/10 gallons per minute (2.2 gpm)	
Ultra low flush water closets (toilets) not to exceed	1 6/10 gallons per flush (1.6 gpf)	
The submetering equipment used to measure the quantity of water used for each dwelling unit and common area must meet the standards of accuracy and testing of the American Water Works Association or similar accredited association. A licensed plumber must install the water closets and submetering equipment.		
Submetering equipment information: _____		
	Manufacturer	Model #
Licensed Plumber Certification		
Print Name of Plumber	License #	Date
I certify that (check all that apply):		
<input type="checkbox"/> I have installed the submetering equipment listed above in accordance with accepted plumbing standards.		
<input type="checkbox"/> I have installed one or more water closets not exceeding 1.6 gallons per flush.		
<input type="checkbox"/> Determined that existing water closets do not exceed 1.6 gallons per flush.		
<input type="checkbox"/> The plumbing permit issued by the city/town, if required, is attached.		
<input type="checkbox"/> Dwelling unit is connected directly to a meter installed by a water company and, in accordance with M.G.L. c. 186, § 22(p), does not require the installation of a submeter.		
Signed under the pains and penalties of perjury, _____		Signature of Licensed Plumber
Property Owner Certification		
I certify that: (1) This dwelling unit is eligible for the imposition on the tenants of a charge for water and/or sewer usage in accordance with the water submetering law (MGL c. 186, §22); (2) All showerheads, faucets, and water closets in this dwelling unit are water conservation devices that meet the standards specified above; (3) The water submeter measuring the use of water in the dwelling unit was installed by a licensed plumber and is in compliance with the standards specified above, or the water meter measuring the use of water in this dwelling unit was installed by a "water company" as defined in M.G.L. c. 186, § 22; (4) The water meter or submeter measures the water usage exclusive to this unit; (5) I will provide to the tenants of this dwelling unit, prior to occupancy, a written rental agreement that clearly provides for the separate charging of water and/or sewer service, and a copy of this certification form; (6) That all information included on this certification is true and accurate to the best of my knowledge.		
Signed under the pains and penalties of perjury, _____		
Print Name of Owner	Signature of Owner	Date
Board of Health/Health Department	Received By	Date