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The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Center for Environmental Health
Community Sanitation Program
250 Washington Street, Boston, MA 02108-4619

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.