



MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

RONALD PRESTON
SECRETARY

PAUL J. COTE, JR.
COMMISSIONER

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

M E M O R A N D U M

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>.

Chapter 417 of the Acts of 2004

AN ACT AUTHORIZING WATER SUBMETERING IN RESIDENTIAL TENANCIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Subsection (4) of section 15B of chapter 186 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out clause (i) and inserting in place thereof the following clause:-

(i) any unpaid rent or water charges which have not been validly withheld or deducted pursuant to any general or special law.

SECTION 2. Said chapter 186 is hereby further amended by adding the following section:- `tuc Section 22.

(a) For the purposes of this section the following words shall have the following meanings:-

"Common area", any portion of a building with more than 1 dwelling unit that is not incorporated within a dwelling unit.

"Customer service charge", a fixed amount charged by a city or town or water company for providing water to a building.

"Dwelling unit", any house or building, or portion thereof, that is occupied, designed to be occupied, or is rented, leased or hired out to be occupied, as a home or residence of one or more persons.

"Landlord", the owner, lessor or sublessor of a dwelling unit, the building of which it is a part, or the premises wherein a customer receives water service through metered measurement.

"Submetering", use of a meter by a landlord who receives water from a water company, which meter measures water supplied to a dwelling unit to enable the landlord to charge the tenant of the dwelling unit separately for water usage, or which meter measures water supplied to a common area.

"Water company", a company, as defined in section 1 of chapter 165 or a municipal utility or any other waterworks system owned, leased, maintained, operated, managed or controlled by any unit of local government under any general or special law, which company, utility or system supplies water to a landlord through metered measurement. Any landlord imposing charges on tenants or otherwise engaging in any activity permitted under this section shall not be deemed thereby to be functioning as a water company as defined herein or to be subject to any laws or regulations regulating any such company.

"Water conservation device", for all showers, shower stalls, shower compartments or shower baths, a low-flow showerhead which shall have a maximum flow rate not exceeding 2 1/2 gallons of water per

minute, for all faucets a maximum flow rate not exceeding 2 and 2/10 gallons of water per minute and for all water closets, ultra-low-flush water closets not exceeding 1 and 6/10 gallons of water per flush, contained within a dwelling unit.

(b) A landlord may cause to be installed by a plumber licensed in the commonwealth, at the expense of such landlord, submetering equipment in the landlord's building to measure the quantity of water provided for the exclusive use of each dwelling unit, provided that such equipment meets the standards of accuracy and testing of the American Water Works Association or a similar accredited association; and provided further, that a submeter is installed for each dwelling unit in the building and for the common areas of the building, so that all water used in a building is measured by both a primary meter and a submeter.

(c) A landlord may charge a tenant of a dwelling unit for water usage as measured through the use of submetering equipment only in accordance with this section and only upon the landlord certifying that the dwelling unit is in compliance with this section to a board of health, health department or other municipal agency or department charged with enforcement of the state sanitary code. All provisions of this section allowing landlords to charge tenants for water usage shall also be deemed to apply to sewer service charges calculated by means of the same primary meter or submeter. Certification by the landlord shall be provided under the penalties of perjury and shall include a statement that: 1) the dwelling unit is eligible for the imposition on the tenant of a charge for water usage in accordance with paragraph (d); 2) all showerheads, faucets, and water closets in the dwelling unit are water conservation devices and that all water closets were installed by a licensed plumber; and 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 of accuracy and testing referenced in subsection (b).

(d) A dwelling unit shall become eligible for the imposition on the tenant of a charge for water usage only upon the commencement of a new tenancy in such dwelling unit and only if: (1) the dwelling unit is being occupied for the first time; or (2) the previous tenant vacated the dwelling unit voluntarily, or was evicted from the dwelling unit for nonpayment of rent or for breach of lease or noncompliance with a rental agreement for the dwelling unit; provided, however, that a dwelling unit shall not be deemed eligible for submetering if the new tenant relocated involuntarily from another dwelling unit in the same building or building complex; and provided further, that once a tenant of a dwelling unit has been charged for the use of water in accordance with this section, such dwelling unit shall remain eligible for the imposition of a charge for the use of water in all subsequent tenancies; and provided further, that a licensed plumber employed by or under contract with the landlord may perform any work in a dwelling unit as is required by this section to allow for the imposition on a tenant of a charge for the use of water, even if such unit is occupied by a tenant upon whom a charge for the use of water cannot be imposed.

(e) A landlord may not charge the tenant of a dwelling unit separately for water usage measured by a submeter, nor allow such tenant to be so charged, unless the submeter 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 tenant of such dwelling unit and does not measure any water usage for any portion of the common areas or by any other party or dwelling unit; provided further, that a landlord shall not charge such tenant for water supplied through a submeter to the dwelling unit prior to the landlord installing fully functional water conservation devices for all faucets, showerheads and water closets in the dwelling unit; and provided further, that the landlord shall ensure that such water conservation devices are installed and functioning properly at the commencement of each subsequent tenancy in such dwelling unit.

(f) A landlord may not charge the tenant separately, nor allow tenant to be charged separately, for submetered water usage unless the tenant has signed a written rental agreement that clearly and

conspicuously provides for such separate charge and that fully discloses in plain language the details of the water submetering and billing arrangement between the landlord and the tenant. Each bill for submetered water usage shall clearly set forth all charges and all other relevant information, including, but not limited to, the current and immediately preceding submeter readings and the date of each such reading, the amount of water consumed since the last reading, the charge per unit of water, the total charge and the payment due date. Such charges shall be billed to the tenant in at least as many periods as the landlord is billed by the water company providing such water to the building or such payments may be made on a monthly payment schedule as agreed to in the written rental agreement; provided, however, that if the landlord bills the tenant on a monthly basis, payment of the bill by the tenant shall be due 15 days after the date the bill is mailed to the tenant, but if the landlord bills the tenant at intervals greater than 1 month, payment of the bill by the tenant shall be due 30 days after the date the bill is mailed to the tenant. If the tenant fails to make such payment, such nonpayment shall be a material breach of the written rental agreement. Violation of such breach may be cured by payment of the water charges in full prior to any court hearing to adjudicate such violation.

(g) A landlord shall determine a calculated cost per unit of water consumption by dividing the total amount of any bill or invoice provided to the landlord from the water company for water usage, the customer service charge and taxes, but not including any interest for the late payment, penalty fees or other discretionary assessments or charges, for all water provided to the premises through the water company meter in that billing period, by the total amount of water consumption for the entire premises. The total amount charged separately to each submetered dwelling unit for water usage for any billing period shall not exceed such calculated cost per unit of water multiplied by the number of units of water delivered exclusively to the particular dwelling unit for the same billing period, provided that the landlord has verified that the total amounts of water usage measured by all submeters in the building, including all submeters for common areas, does not exceed the total amount of water usage in the building for the same billing period as shown on such bill or invoice.

(h) Whenever a tenancy in a dwelling unit commences after the beginning, but before the end, of a billing period for which the landlord has not been billed by the water company, the landlord shall mail to the tenant on the first day of such tenancy the reading on the submeter for the dwelling unit as of that day. The landlord may thereafter bill the tenant only for the water measured on the submeter subsequent to such reading.

(i) Whenever a tenancy in a dwelling unit terminates after the beginning, but before the end, of a billing period for which the landlord has not been billed by the water company, the landlord shall give to the tenant on the last day of such tenancy the reading on the submeter for the dwelling unit as of that day together with a final bill for water usage in the dwelling unit since the last prior reading of the submeter for such dwelling unit. The landlord shall charge the same rate for the water used by the tenant as the water company charged in the last bill issued to the landlord. Notwithstanding paragraph (f), the bill shall be immediately due and payable by the tenant. If the tenant does not pay the bill, the landlord may deduct the amount of the bill from any security deposit paid by the tenant in accordance with section 15B of chapter 186, prior to returning the balance of the security deposit, if any, to the tenant. If the landlord is not able to give the final reading on the submeter for the dwelling unit together with a final bill for water usage to the tenant on the last day of the tenancy, the landlord shall mail such reading and such final bill to the tenant no later than the day after the termination of the tenancy. If the water company subsequently charges the landlord a lesser rate than the landlord charged the tenant in the final bill, the landlord shall recalculate the bill forthwith based on the lesser rate and mail to the tenant the revised bill together with a rebate for any overpayment made by the tenant.

(j) A landlord shall not charge or recover, or allow to be charged or recovered, any additional servicing, administrative, establishment, meter-reading, meter-testing, billing, or submetering fee or other fee

whatsoever, however denominated.

(k) Water usage separately charged to tenants pursuant to this section shall be delivered by the water company to the landlord and such landlord shall:- (1) be the consumer; (2) for billing purposes, be the customer of record; (3) be responsible for payment of the water company bills; and (4) be subject to any actions of the water company for nonpayment.

(l) In the event of nonpayment of a bill to a water company by the landlord, such water company shall have all the remedies against the customer of the water company available pursuant to any law, rule or regulation. A landlord may not shut off or refuse water service to a tenant on the basis that the tenant has not paid a separately assessed submetered water usage charge.

(m) The landlord shall retain an affirmative obligation to maintain in good working order the water supply system to each dwelling unit and any component thereof, including any water conservation device and submeter installed pursuant to this section, and to respond in a timely manner to any request by the tenant for the repair of any defect or malfunctioning in such water supply system, including any leak. Such water supply system to any dwelling unit and any component thereof including, but not limited to, any water conservation device and submeter installed pursuant to this section, shall be governed by and maintained in accordance with the state sanitary code. In the event of any overcharge by the landlord or any violation of the state sanitary code, the tenant shall have all rights and remedies provided under law for such overcharges or such violations including, but not limited to, the rights and remedies provided under chapters 111, 186 and 239.

(n) Upon receipt of a bill for water usage from the landlord and within the time allowed for paying the bill, a tenant may request that a person or entity with expertise in the installation and operation of water submeters and with no financial or other relationship with the landlord, test the submeter for the dwelling unit leased by the tenant to determine whether it is accurately measuring the water being used in the dwelling unit. If the submeter is found to be measuring more water than is being used in the dwelling unit, the landlord shall install a new submeter at his own expense and shall also pay for the cost of the test. In addition, the person or entity conducting the test shall determine as accurately as possible the amount of water that was improperly measured by the submeter in both the prior and current billing periods. The landlord shall calculate the amount the tenant was overcharged for the prior billing period and reduce the bill by that amount, or, if the tenant has already paid the bill, give the tenant a rebate in that amount. Upon receipt from the water company of the bill for the current billing period, the landlord shall calculate the amount of the bill attributable to the excessive measurement by the submeter and reduce the bill to the tenant by that amount prior to sending it to the tenant. If the submeter is found to be measuring no more water than is being used in the dwelling unit, the tenant shall pay for the cost of the test; provided, however, that if the tenant does not pay for the cost of the test, the landlord may add such cost to the next bill sent to the tenant and such cost shall be considered a part of the bill for purposes of paragraph (f) and clause (i) of subsection (4) of section 15B of chapter 186.

(o) In the event of a repair of a leak in the water supply system to a dwelling unit, the landlord shall determine as accurately as possible the amount of water that was measured on the submeter for the dwelling unit as a result of such leak, after a review of the billing records for the dwelling unit and consultation with the licensed plumber repairing the leak. The landlord shall then determine the amount of the bill for the billing period in which the leak occurred that was attributable to such leak and reduce the bill to the tenant by that amount or, if such bill has already been paid, grant the tenant a rebate in that amount; provided, however, that with regard to any leak about which the tenant knew or should have known, the landlord shall only be required to reduce the bill to the tenant, or to grant a rebate to the tenant, by or in an amount attributable to the water usage measured on the submeter as a result of the leak between the date the tenant gave notice to the landlord of the leak and the date the leak was

repaired.

(p) A landlord may impose a charge for water use on the tenant of a dwelling unit that is connected directly to a meter installed by a water company; provided that the meter measures only water that is supplied for the exclusive use of the dwelling unit and only to an area within the exclusive possession and control of the tenant of such dwelling unit and does not measure water usage for any portion of any common area or by any other party or dwelling unit. The landlord and tenant shall have all of the same rights and obligations with respect to water charges for such dwelling unit that landlords and tenants have under this section with respect to water charges for any dwelling unit connected to a submeter; provided, however, that the landlord shall not be required to include in the certificate required by subsection (c) the information required by clause (3) of said subsection (c) for dwelling units connected to a submeter; and provided further, that subsection (n) shall not apply to dwelling units connected directly to a meter installed by a water company. Upon a request by the tenant of a dwelling unit connected directly to a meter installed by a water company, the landlord shall apply for a test of the meter to determine its accuracy in accordance with section 10 of chapter 165. The test shall be conducted in accordance with said section 10. The tenant shall reimburse the landlord for any cost incurred in connection with such test. If the tenant does not reimburse the landlord for such cost, the landlord may add such cost to the next bill sent to the tenant and such cost shall be considered to be part of the bill for purposes of subsection (f) and clause (i) of subsection (4) of section 15B of chapter 186.

(q) Nothing in this section shall be construed to increase or expand, change, eliminate, reduce or otherwise limit the liabilities or obligations of any water company that are set forth in any law, rule, regulation or order to the tenant of a dwelling unit who is receiving water provided to the building by the water company.

(r) Nothing in this section shall affect or impair the powers and duties of the department of environmental protection or the department of public health with respect to water supply under chapter 111.

(s) No charge for water usage may be imposed on the tenant of any dwelling unit in a public housing development pursuant to chapter 200 of the acts of 1948, chapter 667 of the acts of 1954, chapter 705 of the acts of 1966, or chapter 689 of the acts of 1974.

(t) The department of public health shall promulgate such additional regulations to the state sanitary code as it determines to be necessary to implement this section.

Approved December 16, 2004.

Return to:

List of Laws passed in 2004 Session

General Court home page, or

Commonwealth of Massachusetts home page.