

**Report on Rental Property Efficiency Disclosure Form and Recommendations
Presented to the Utilities and Energy Committee
January 31, 2006**

During the First Session of the 122nd Legislature, the Legislature enacted P.L. 2005 ch. 109, Resolve, To Establish Energy Standards for Residential Rental Properties. The Resolve requires the Public Utilities Commission (Commission) and the Maine State Housing Authority (MSHA) to coordinate among interested stakeholders discussions about energy efficiency and appropriate efficiency standards for rental properties. The Resolve specifies that these discussions shall result in the development of a disclosure form by which landlords inform prospective renters of the efficiency of rental units and inform renters of their ability to obtain the rental units' energy consumption and utility costs. Finally, the Resolve requires the Commission and the MSHA to report to the Utilities and Energy Committee the results of and any recommendations produced by the discussions, and to submit the disclosure form developed during the discussions.

This report responds to the Resolve.

I. DISCUSSIONS

Since enactment of the Resolve, representatives of the bill's sponsor, the Maine Apartment Owners and Managers Association, the League of Young Voters (a chapter of the League of Independent Voters, generally representing renters), the Commission, and the MSHA (collectively known as the Group) have met on a number of occasions. The Group developed a rental property disclosure form, suggested energy efficiency standards for rental properties, and proposals for reasonable methods of disseminating the form (including enforcement of dissemination). The Group identified issues associated with compliance with the suggested standards, but did not reach consensus on whether compliance should be mandatory or voluntary. The group distributed the form and suggested standards to a larger group of potentially interested entities and solicited comments.

II. DISCLOSURE FORM

In developing the disclosure form (shown in Attachment 1), the Group concluded that the following goals should be attained: the form should be understandable by all landlords and renters; the form should be useable for all rental properties; and the form should suggest efficient but reasonably attainable standards.

These goals resulted in a simple form with check-off categories that are general enough to be understood by lay persons with some familiarity with building efficiency terms. For example, in portions of the form that require disclosure of wall, ceiling, and floor insulation, there are two categories of check-off boxes; one requires the landlord to indicate the insulation thickness, while the other allows the landlord to indicate whether the cavity is filled, partially filled, has no insulation, or has unknown levels of insulation. This approach is flexible enough to accommodate properties where insulation levels are

thoroughly known and those where knowledge is sketchier. Allowing more general categories makes the form immediately useable by most landlords, while requiring all landlords to have rudimentary knowledge of their properties' efficiency. Including the more specific categories allows renters who desire thorough efficiency knowledge to shop for it and encourages landlords to become more aware of their properties' efficiency levels in response to renter demand for that awareness.

These goals also resulted in efficiency categories that are relatively generic and that avoid many complex specific situations that are typically addressed by more formal building codes. For example, there may be reasons why a property or portions of a property are not well-insulated. A landlord may explain such situations to tenants, but the form remains simple and understandable.

Despite its flexibility, the form includes "suggested minimum guidelines" for each efficiency category. For example, while a variety of ceiling insulation levels are listed, the form presents a suggested minimum guideline of R-38 or cavity-filled. These guidelines allow an uninformed renter to learn whether the property's efficiency is generally adequate. The suggested guidelines define moderate efficiency. While significantly higher efficiency can be (and should be) attained when possible, the more moderate guidelines set a goal that is reasonably attainable in most properties.

Pursuant to the Resolve, the form states that the renter has the right to obtain a 12-month history of the electricity and natural gas used by the rental unit.

Finally, a second page of the disclosure form provides additional information about some of the terms and standards. It retains the simplicity that will allow it to be understandable to most lay persons.

III. STANDARDS

The suggested energy efficiency standards for rental properties (shown in Attachment 2) attain the same goals as does the disclosure form. The standards are simple to understand. For example, insulation standards are stated in terms such as "insulate wall cavities" rather than as required R values. They are reasonably attainable, in that they are general and are expressed as actions a landlord can take. For example, "seal holes and cracks in walls, floors, and ceilings" is not overly complex or directive, but is a simple action that any landlord can take in any property. Actions that require equipment replacement are generally targeted to a time when the equipment would otherwise be replaced, thereby avoiding costly upgrades. Finally, the standards include target dates that members of the group judged to be attainable without being overly onerous to landlords.

As on the disclosure form, these standards would attain moderate efficiency levels. While significantly higher efficiency can be (and often should be) attained when possible, the more moderate standards set a goal that is reasonably attainable by most landlords.

IV. DISSEMINATION OF THE DISCLOSURE FORM

The Group considered whether dissemination of the disclosure form should be mandatory or voluntary, and concluded that landlords of all rental properties should be required to show the disclosure form to each tenant before the tenant commits to renting the property. Dissemination is not overly onerous for landlords and a requirement that is consistent in all situations is fair and easy to understand. Furthermore, the form serves a purpose well beyond assisting renters in choosing a property. It also raises public awareness of the need to consider energy efficiency in housing, and it educates consumers on the aspects of construction that determine efficiency. These results can best be attained if the form is as widely disseminated as possible.

The Group believes that potential renters should be provided with the disclosure form before deciding upon a rental commitment. However, the Group also considered certain practical difficulties of supplying the disclosure form to all potential renters (e.g., persons inquiring by phone or looking at many units in one building). The Group recommends that landlords post the disclosure form in each rental unit, make a form available for any unit upon an in-person request, actively supply the form to any potential renter, and gain that renter's signature on the form before the renter signs a contract or pays a deposit.¹ Rental units not intended as a primary residence should not be subject to mandatory dissemination of the disclosure form.² Finally, landlords should be required to save signed forms for seven years.³

The Group considered enforcement of the dissemination requirement; i.e., how to most effectively ensure that all landlords provide the disclosure form to renters. The Group assumed that the adopted method must incur virtually no additional expense. With this in mind, it is not realistic to require code enforcement officials to verify that landlords disseminate the form, municipalities or a state agency to collect and inspect the form, or landlords to mail the form to some other collection entity. The Group concluded that there are only two workable enforcement mechanisms. One is that failing to give a tenant the disclosure form prior to occupancy (as demonstrated by producing a copy of the form signed and dated by the tenant) gives the tenant authority to terminate a lease at any time without incurring any penalty. This was suggested by the landlords' association as particularly effective and inexpensive. The other method is court action by an aggrieved tenant. While this approach places the burden of enforcement on tenants, it is not inconsistent with enforcement of many other consumer rights. The Group recommends that the sanction imposed for failure to provide the form

¹ A landlord would have no obligation to mail the form to a potential or imminent renter.

² Examples include, but are not limited to, hunting camps, summer cabins, and timeshares.

³ Upon complaint from a renter, a landlord must be able to provide proof that the renter received the disclosure form. The Group chose seven years because we understand it to be consistent with other document retention policies.

or for deliberately falsifying information be payment by the landlord to the tenant of a fixed dollar amount.⁴

Finally, the Group recommends that the Commission and the MSHA post the form on their web pages and have paper copies available upon request. Landlords would be responsible for obtaining the forms and suggested standards from either of those sources. It is likely that landlord associations would print and make available the forms and suggested standards and would inform their members of the requirement for disclosure.

V. COMPLIANCE WITH THE SUGGESTED STANDARDS

The Group considered whether landlords should be required to comply with the Suggested Energy Efficiency Standards (or any other standards). Members of the Group disagreed on this matter. Those supporting mandatory standards felt that mandatory compliance would offer the greatest assurance that the stock of rental properties would become more energy efficient over time. If the standards are sufficiently flexible that they are not onerous to accomplish, then compliance should not be difficult. Market pressure from disclosure forms will affect certain pockets – high competition areas, for example – but may have markedly less effect on long-term residents (often the elderly), buildings that are frequently sold and resold, and entire regions where demand is weak and housing choices limited. Without intervention, these sectors may never improve.

The countervailing view was that market forces will provide sufficient impetus for improving the energy efficiency of rental units, especially as energy prices rise. In addition, improved public awareness created by the disclosure form will result in consumer pressure for improved efficiency. Finally, installing efficiency measures may be difficult or costly in some existing units, and it may be difficult to enforce mandatory standards without additional funding.

Because members have not reached consensus on this matter, the Group makes no recommendation.

The Group notes that effective policy would be easier to develop with better knowledge of efficiency levels across the State and with the ability to monitor efficiency levels in the future. The Group recommends that the Legislature authorize a study at an appropriate time to determine whether any voluntary standards should be converted to mandatory standards. The Group considered methods to measure and monitor efficiency levels, but concluded that such efforts would require additional funding and were therefore impractical at this time.

⁴ The Legislature should discuss and receive wider input on the appropriate dollar amount. One option might be tiered penalties based on number of offenses.

VI. CONCLUSION

The Group that met in compliance with P.L. 2005 ch. 109 has developed a reasonable but effective disclosure form and list of suggested energy efficiency standards for rental properties. The Group concludes that requiring landlords to disseminate the disclosure form and supplying landlords with the suggested standards are attainable first steps that will result in some level of improvement in the energy efficiency of rental properties without creating an undue burden on landlords or any other member of the rental community. The members of the Group do not agree on whether compliance with the suggested standards should be mandatory or voluntary. Members of the Group will be happy to discuss all issues raised in this report with the Utilities and Energy Committee as it considers the recommendations in the report.