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TO: Building Energy Disclosure Working Group

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RE: U.S./Canada Building Energy Disclosure Requirements

Overview

Energy audits have been available in the U.S. for decades. However the concept of mandatory energy audits is a fairly new one with a handful of states and cities requiring audits as a part of the buy/sell transaction or as a regulation based on age of the building for public disclosure purposes.

As a result, data on actual outcomes of mandatory energy audit ordinances is difficult to cite. The Austin, Texas ordinance begun in 2008 provides some data. According to the *American Statesman* newspaper, of the 4,800 audits performed that found at least one energy improvement, 500 completed.

According to the World Energy Council, mandatory energy audits, although again recent phenomenon, are widespread in countries in Europe, India, and Asia. There are a wide variety of mandatory features reaching from the soft approach in Australia, which aims at business culture changes, to strong regulatory approaches in Taiwan, India or Bulgaria, which include mandatory standards for industrial processes. Energy-use benchmarking - comparing the specific energy consumption (SEC) of a particular sector or sub sector with its rivals in the country or at international level - is also used quite frequently – but almost exclusively for industrial and commercial buildings.

WEC reports that in many countries, investigated mandatory audits are also fairly new, and the knowledge and outcomes about their impacts is still limited. From the information obtained so far as it can be concluded that energy audits and the implementation of subsequent measures lead to savings of 5-10% for the participating companies.

In the absence of an effective energy conservation utility such as Efficiency Vermont, equally important is the cultural change that mandatory audits can also initiate in companies by making energy efficiency a regular goal at all levels of the company. Experience in Australia show that an "external view", implemented by an energy auditor on energy use in a company, often also brings additional value, according to WEC.

Building Energy Disclosure Laws in the U.S. and Canada

California

California passed Assembly Bill 1103 last year with some aspects deferred until 2012.

What does the legislation require?

Requires owners of non-residential buildings over 1,000 square feet to rate their buildings using the *Energy Star Portfolio Manager* online software tool. They must disclose a Statement of Energy Performance to the California Energy Commission (CEC) as well as to prospective buyers, lessees or lenders prior to the closing of a transaction. Utilities are required, at the request of a building owner, to automatically upload energy consumption information for a building into Portfolio Manager software.

What is exempted by the legislation?

AB 1103 does not apply to multifamily buildings or the partial sale, lease or financing of nonresidential buildings.

Other details:

The Statement of Energy Performance is valid for 120 days following its generation. If a building owner makes a subsequent disclosure outside of this time period, they must re-benchmark the building and generate a new Statement of Energy Performance.

Building owners and sellers can increase their energy rating conducting an energy audit of the building and by implementing the recommended energy efficiency improvements.

San Francisco, CA

The “Existing Commercial Buildings Energy Performance Ordinance” took effect in February, 2011.

What does the ordinance require?

Requires annual benchmarking, periodic energy audits and the public disclosure of benchmarking information (via public website) for nonresidential buildings (both public and private) using *Energy Star Portfolio Manager*, which complements California's statewide initiative, AB 1103.

Buildings must be over 10,000 SF to be subject to the requirement. Compliance deadlines are staggered based on building size.

Washington

Washington's "Efficiency First Bill" (SB 5854).

What does the legislation require?

In May, 2009, Washington Governor Chris Gregoire signed into law SB5854, also known as the *Efficiency First* bill. SB 5854 focuses on energy efficiency in the built environment and requires commercial building energy rating and disclosure, major improvements to the state energy code and energy performance standards and retrofits (if necessary) for public buildings.

By January 1, 2011 all non residential buildings larger than 50,000 sq ft were required to rate their buildings using *Energy Star Portfolio Manager*, and to disclose that information to prospective buyers, lessees, and lenders prior to the closing of transaction. Public facilities are also required to benchmark and report their energy use.

What is exempted by the legislation?

All non-residential buildings larger than 10,000 sq ft will have same requirements by Jan 1, 2012.

Other details:

Beginning January 1, 2010, qualifying utilities must maintain records of energy consumption data for all non-residential and qualifying public agency buildings for which they provide service. Upon receiving authorization from a non-residential building owner or operator, the qualifying utility must upload all of the energy consumption data associated with that building to the Portfolio Manager. Non-public, non-residential building performance data must be uploaded either in 2011 or 2012, depending on the size.

Seattle, WA

The city opted for mandatory reporting because it felt that a voluntary approach was not working fast enough and was created to add more stringent reporting guidelines to SB 5854.

What does the ordinance require?

Owners of nonresidential and multifamily buildings must benchmark energy performance with *Energy Star Portfolio Manager* and disclose their results to the Seattle Department of Planning and Development (DPD) and to transactional parties.

Nonresidential buildings 10,000 square feet or larger and multifamily buildings with four or more units are subject to the requirement. Initial compliance is being phased-in from 2011 to 2012.

Other details:

Building owners must thereafter annually report benchmarking data to DPD and disclose a Statement of Energy Performance to current tenants as well as prospective buyers, tenants, and lenders.

Maryland

Senate Bill 261

What does the legislation require?

Maryland is considering a bill that would require an owner or operator of certain privately owned commercial buildings to disclose certain energy benchmarking information to certain persons; providing that a purchaser or lessee that does not receive an energy benchmark disclosure statement on or before entering into a contract for sale or lease has the right to rescind the contract within a certain time and to the immediate return of any deposit; providing that a benchmark is valid for a certain time period; defining certain terms; and generally relating to the disclosure of energy usage information for privately owned commercial buildings.

Massachusetts

A proposal is being debated in Massachusetts for disclosure of building energy data.

Building Energy Asset Labeling Program:

Massachusetts is proposing to develop and implement a building energy labeling program that includes both asset and operational energy ratings, and is integrated with utility funded energy efficiency programs. Through a two-three-year pilot, the goal is to demonstrate the ability of an energy label to drive further investment in energy efficiency within the commercial building sector. See ["An MPG Rating for Commercial Buildings: Establishing a Building Energy Asset Labeling Program in Massachusetts"](#) PDF

Scope: Public buildings that are greater than 10,000 square feet, and commercial and multi-family buildings that are greater than 10, 000 square feet.

City of Portland, OR

What does the ordinance require?

Portland has implemented a public disclosure requirement for commercial and multi-family buildings of 20,000 square feet or larger using the *Energy Star Portfolio Manager* tool.

What is exempted by the legislation?

Residential buildings are exempted.

New York City, NY

What does the ordinance require?

Benchmarking of all city-owned buildings began on May 1, 2010 and every year thereafter with benchmarking of commercial and multi-family buildings of 50,000 sq. ft. or more beginning on May 1, 2011 and every year thereafter.

Disclosure of building energy ratings to a public, online website, are scheduled to begin in September 2011 with energy audits and retro-commissioning once every 10 years.

Santa Fe, NM

In 2007, the city of Santa Fe passed an ordinance requiring that prospective new home buyers be provided an energy rating using the Home Energy Rating System (HERS) and that all new buildings have that rating posted conspicuously prior to sale.

Washington, DC

Green Building Act, 2006

What does the ordinance require?

Requires buildings not only to meet certain LEED certification standards, but also that building owners benchmark and disclose their building's energy ratings independent of any transaction and also to the general public, according to a phased in schedule.

Owners are also required to publish up-to-date building energy performance data to a public, online database. The schedule for building ratings began in 2010 and goes according to square footage, beginning with buildings of 200,000 square feet or more and decreasing by 50,000 square feet each year, until reaching the floor of 50,000 square feet. Building owners must begin disclosing these ratings beginning in 2012.

Province of Ontario, Canada

In May, 2009 Ontario implemented the *Green Energy Act 150*.

What does the legislation require?

Home sellers will be required to have a home energy audit conducted and produce the audit report to a buyer in order to sell their home.

Perhaps the earliest Audit and Disclosure ordinance passed in the U.S. with the most actual experience and outcomes is the "Energy Conservation Audit and Disclosure" (ECAD) ordinance passed in June, 2008 in the city of Austin, Texas.

Austin, TX

What does the ordinance require?

The ordinance requires building energy rating and disclosure for nonresidential facilities with mandatory energy audits for homes and apartment complexes. Some apartment complexes are required to undergo energy retrofits.

All Austin commercial buildings that receive electricity from Austin Energy must have an *Energy Star Portfolio Manager* building rating by June 1, 2011.

According to the *American Statesman* newspaper of Austin, TX, July, 2010 – some two years into the experience of the municipality’s ECAD ordinance -- in 96 percent of the 4,862 audits conducted, the energy auditors recommended at least one improvement. *However, only 520 homebuyers or sellers followed through on any of the recommendations.*

What is exempted by the legislation?

If the building is less than 10 years old on June 1, 2011, a rating must be submitted by the 10th anniversary of the year of construction. Condominiums are exempted.

The single-family home is exempt from an ECAD audit if it meets any one of the following conditions. Within 10 years before the sale, the home received:

- At least three energy-efficiency improvements through the *Austin Energy Home Performance with ENERGY STAR® program* or an equivalent Austin Energy program. These improvements include: increasing attic insulation to R38; installing solar screens, solar film, or low-E windows; adding radiant barriers in the attic; replacing or insulating ducts; reducing air infiltration and sealing ducts; and installing new qualifying HVAC systems.
- A total of \$500 in rebates through the *Austin Energy Home Performance with ENERGY STAR® program*.
- Energy-efficiency improvements through the *Austin Energy Free Home Improvements program*, which is offered only to customers with low-to-moderate incomes.
- The building does not need an energy rating if it is a manufacturing facility that receives a Texas Sales Tax Exemption from Texas Tax Code 151.317.

NOTE: <http://www.buildingrating.org> has interactive information on many of these initiatives at the following link:

<http://www.buildingrating.org/content/spotlight-policy-briefs-0>

U.S. Building Energy Performance Rating and Disclosure Policies

	Building Types	Disclosure	Also Required
California	Non-residential	Point of Transaction, Buyers & public display for multifamily buildings	Utility assistance
District of Columbia	Non-residential	Annual to public website	Disclosure of energy use estimations for new buildings 50k sf+
Austin, TX	Non-residential & multifamily	Point of Transaction, Buyers & public display for multifamily buildings	Energy audits for multifamily buildings & retrofits for inefficient multifamily buildings
Washington State	Non-residential	Point of Transaction, Buyers, lessees and lenders	Utility assistance mandatory audits & retrofits for inefficient public buildings & minimum ratings for state leases
New York City	Non-residential & multifamily	Annual to public website	Energy audits & retro commissioning: mandatory retrofits for inefficient public buildings
Seattle	Non-residential & multifamily	Point of Transaction, buyers, lessees and lenders + current tenants + annual to city	Utility assistance
Portland, OR	Non-residential & multifamily	Annual to public website	Disclosure of energy use for buildings 20k sf+

	Building Types	Disclosure	Also Required
San Francisco	Non-residential	Annual benchmarking, audits to public website	Disclosure for buildings over 10k sf. (Complement to CA Bill 1103)
CANADA: Ontario	Residential	Point of Transaction: audit	Public financing incentive
UNDER CONSIDERATION: Massachusetts	Non-residential & multifamily	3-yr pilot for energy labeling integrated with utility-funded efficiency programs.	Public buildings 10k sf+ and multifamily 10k sf +
UNDER CONSIDERATION: Maryland	Non-residential	Point of Transaction to buyers	