



STAFF REPORT INFORMATION ONLY

Update on the Energy Consumer Protection Act, 2009 (Bill 235)

Date:	February 8, 2010
To:	Tenant Defence Sub-Committee
From:	General Manager, Shelter, Support & Housing Administration
Wards:	All
Reference Number:	

SUMMARY

The Government of Ontario Ministry of Energy and Infrastructure (“MEI”) was given First Reading on Bill 235, the *Energy Consumer Protection Act, 2009* (“Bill 235”) on December 8, 2009. This Bill, if enacted, would establish rules for sub-metering in residential rental properties including amendments to the Residential Tenancies Act regarding notification to tenants and determination of rent reductions. Bill 235 is currently proceeding to Second Reading. City of Toronto staff have responded to MEI’s request for comment on the draft Bill. The submission was made by the February 6, 2010 deadline and is attached.

Financial Impact

There are no financial impacts.

DECISION HISTORY

At its January 27 and 28, 2009 meeting, Council approved a report titled “Installation of Sub-Meters in Residential Rental Units and Its Impact on Tenant Affordability”. The report was concerned with the issue of a fair transfer of responsibility for payment of utility costs from the landlord to the tenant. Among other things, Council recommended that the appropriate provincial ministries move quickly to enact legislation to ensure that measures were in place prior to electricity being removed from tenant rents, and that rent reductions be calculated in a fair and transparent manner. In addition, Council approved up to \$25,000 to support tenant dispute applications, in partnership with Toronto community legal clinic(s), on issues related to sub-metering of residential rental properties.

The recommendations, as approved by Council, are listed in Appendix A. The full report can be found at

<http://www.toronto.ca/legdocs/2008/agendas/committees/td/td081209/it001.pdf>

On March 25, 2009, the Tenant Defence Sub-committee requested that staff provide a briefing to councillors on the sub-metering issue, including information about a recent decision of the Landlord and Tenant Board (LTB) with respect to sub-metering of residential rental properties.

<http://www.toronto.ca/legdocs/2009/agendas/committees/td/td090325/tddd.pdf>

On September 30, 2009, the General Manager, Shelter, Support and Housing Administration reported to City Council on: (1) the OEB Order and its impact on tenants; (2) strategies available to tenants who currently have had their units sub-metered and, as a result of the OEB Order, are no longer obliged to pay energy costs directly; and (3) what measures would increase fairness.

<http://www.toronto.ca/legdocs/mmis/2009/cc/bgrd/backgroundfile-23859.pdf>

ISSUE BACKGROUND

Bill 235 is a response to the regulatory uncertainty regarding smart sub-meters created by the August 13, 2009 decision of the Ontario Energy Board (OEB), and the lack of legislation on smart-meters in the *Residential Tenancies Act* (RTA).

COMMENTS

Staff of the Shelter, Support and Housing Administration Division reviewed Bill 235 and responded to MEI's invitation to comment on the current draft of Bill 235 by gathering together key staff from affected divisions. At the meeting, staff first obtained a briefing by MEI and the Ministry of Municipal Affairs and Housing, then agreed on significant points to be addressed at this stage.

The attached submission, signed by the City Manager, makes three main points:

1. The absence of corresponding draft regulations accompanying Bill 235 makes it very difficult to appreciate the full implications of Bill 235. Many of the provisions of Bill 235 require regulations to assess their scope and, therefore, implications. City staff should be consulted on the regulations.
2. Bill 235 only addresses energy efficiency through the installation of sub-meters and has limited requirements for landlords in terms of energy efficiency standards prior to the installation of sub-meters. Staff are concerned that opportunities for significant conservation achievements will be missed.

3. Far more tenant protection needs to be built into Bill 235, including guidelines on administrative fees that may be levied by sub-metering providers, provisions related to monitoring and informed consent, and tenant education initiatives.

The issues raised are consistent with City Council Decision, CD21.4, Installation of Sub-meters in Residential Rental Units and Its Impact on Tenant Affordability Units, Approved by City Council on January 27 and 28, 2009 and City Council Decision, CD26.5, Protecting Tenants from Unregulated Electricity Sub-Metering in Apartment Buildings, Approved by City Council on September 30 and October 1, 2009.

Additional opportunities will be available to comment on Bill 235 as it proceeds.

CONTACT

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SIGNATURE

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ATTACHMENTS

- Appendix A: January 2009 Council Approved Recommendations regarding Sub-Metering
- Appendix B: Staff Submission on Bill 235

Appendix A
January 2009 Council Approved Recommendations regarding Sub-Metering

Community Development and Recreation Committee Report CD21.4.

Installation of Sub-meters in Residential Rental Units and Its Impact on Tenant Affordability Units
City Council Decision

City Council on January 27 and 28, 2009, adopted the following:

1. City Council request the Minister of Municipal Affairs and Housing to move quickly to enact sections 137 and 138 of the Residential Tenancies Act, and develop regulations which will ensure that comprehensive and effective energy efficiency measures are in place prior to hydro being removed from the rent, and that rent reductions be calculated in a fair and transparent manner.
2. Until such time as sections 137 and 138 are enacted, City Council request the Minister of Municipal Affairs and Housing to immediately take steps to improve protection for tenants from negative impacts of sub-metering, including:
 - a. implementing interim information and communication programming to support tenants in understanding and enforcing their rights under section 125 of the Residential Tenancies Act;
 - b. legislative amendments to section 125 to ensure fair practices in the transfer of hydro costs from landlords to tenants, including requirements for informed consent; and
 - c. regulatory amendments to section 125 to ensure a fair and transparent determination of rent reductions.
3. City Council request the Minister of Energy and Infrastructure to review the provincial regulatory and incentive environment as it applies to sub-metering in multi-residential rental properties, and to move quickly to put in place measures to ensure fair practices and protect tenants, including licensing of sub-meter providers operating in rental residential buildings.
4. City Council request the Chair of the Cabinet Committee on Poverty Reduction to support enhanced funding to programs that help low-income tenants to pay hydro costs when they cannot afford the cost of this vital service, and to take other actions towards reducing energy poverty.
5. City Council delegate authority to the General Manager, Shelter, Support and Housing Administration, to allocate up to \$25,000 from the Tenant Defence Grant

- Fund to support tenant dispute applications, in partnership with one or more Toronto community legal clinics, on issues related to the removal of hydro as a service included in the rent, and to report to the Tenant Defence Sub-committee on the results of any cases funded under this recommendation.
6. City Council send a copy of this report to the Ontario Energy Board, the Ontario Power Authority, Ontario's Chief Energy Conservation Officer, the Ministry of Energy and Infrastructure, the Ministry of Municipal Affairs and Housing, the Landlord and Tenant Board, and Toronto Hydro to advise of Council's concerns about tenant protection and fair rent reductions where hydro is removed as a service included in the rent.
 7. City Council request the Province of Ontario to put a hold on the installation of "smart meters" in residential rental units until such time as the appropriate legislative amendments and/or regulations have been brought into force.
 8. City Council forward these recommendations to all municipalities in Ontario with a population of over 30,000.

Appendix B
Staff Submission on Bill 235



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February 5, 2010

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Re: EBR Registry #010-8556, Bill 235, Energy Consumer Protection Act, 2009

Dear Ms Anderson:

This submission on Bill 235 is being made by staff of the City of Toronto. The views expressed herein are consistent with Council decisions made with respect to sub-metering of rental housing and energy conservation (copies of relevant reports are attached).

Summary:

As the largest municipality in Canada, with 2.6 million residents, the regulation of the provision of energy in rental units is of considerable interest to the City of Toronto because:

- 45.6% of our citizens rent their homes;
- 46.6% of renter households are living in homes they cannot afford (paying more than 30% of their income on rent); and
- Council has made substantial commitments to energy conservation and greenhouse gas emission reductions.

We understand that the August 13, 2009 ruling of the Ontario Energy Board ("OEB") decision that certain existing sub-metering agreements between landlords and tenants be unwound and renegotiated, combined with sections 137 and 138 of the *Residential Tenancies Act* not being in force, has left a regulatory gap. The City of Toronto has been anticipating the introduction of clear provincial rules and programs clarifying the relationship between landlords, tenants and sub-metering providers in the provision of energy, and aimed at maximizing energy conservation while at the same time protecting the rights of tenants and affordability of rental housing.

In response to this gap, Bill 235 was introduced by the Government of Ontario Ministry of Energy and Infrastructure ("MEI") and is currently in Second Reading. We commend MEI for taking action

to address the regulatory gap, and its efforts to look for ways to balance fair treatment of landlords and tenants with the objective of reducing electricity consumption in Ontario.

The City of Toronto is concerned that Bill 235 may not adequately address two critical issues of significance to the City:

- the need for and proper use of incentives to achieve energy conservation; and
- protections for tenants, including social housing tenants, in respect of sub-metering providers to ensure informed consent and fair rent reductions.

More generally, it is unclear whether there is evidence to support the view that legislation which facilitates the transferring of electricity costs included in the rent to electricity costs being paid directly by tenants would significantly contribute to energy conservation. Additional information about each of these issues is provided below.

The City of Toronto urges MEI to review Bill 235 and make amendments which may be required to address these issues. Further, the City of Toronto suggests that consideration be given to programming which would be required to support implementation of Bill 235, including such things as assessment of energy standards, monitoring, and capital grants programs.

The City of Toronto also notes that the absence of draft Regulations accompanying Bill 235 makes it very difficult to appreciate the full implications of the proposed bill. We recommended that draft Regulations be prepared prior to Third Reading, and request that the City of Toronto be consulted on the draft regulations. Such early and substantive consultations would be consistent with the Toronto-Ontario Consultation and Cooperation Agreement (T-OCCA) and could be conducted under T-OCCA's confidentiality provisions.

Issues of Concern:

1. Strategies for Maximizing Energy Efficiency

The intention, in part, of Bill 235 is to promote energy conservation, in multi-residential rental buildings. Our concern is that Bill 235 appears to be premised on the theory that having tenants pay directly for electricity will cause electricity use to be reduced.

There is little research establishing that sub-metering alone meaningfully contributes to increased energy conservation. By contrast, we have received feedback that having tenants pay directly for electricity rather than having it included in the rent removes the incentive from landlords to undertake energy efficiency improvements. Instead, the incentive to conserve is transferred to tenants, and tenants are often the least able to undertake conservation improvements. As such, we are concerned that sub-metering may actually detract from conservation by removing the incentive from landlords to make conservation improvements.

Recommendation 1: The City of Toronto requests that MEI make available its research and findings that demonstrate the effect of sub-metering on consumer behaviour in rental residential properties and its potential for contributing to significant energy savings.

In its requirements relating to initiatives that must be undertaken by landlords where sub-metering agreements have been introduced under proposed sections 137(9) and 137(10), there are no provisions for overall building energy standards to be met by building owners or for certifying when such standards are met (e.g. something akin to LEED for Existing Buildings). There are also no provisions for ongoing monitoring to ensure that energy savings continue to be met. As another example, there are neither incentives nor requirements that landlords assume conservation measures to be taken for common elements (e.g. lobby and exit lighting, building-wide HVAC). As more and more units move to paying directly for electricity, whether through the consent of the sitting tenant or upon turn-over of the unit, there may be less and less incentive for landlords to make energy saving improvements to buildings. Ongoing monitoring, over and above requiring tenants to enforce conservation through applications to the Landlord and Tenant Board or Above Guideline Applications by landlords, may be required.

Recommendation 2: The City of Toronto recommends that additional detail and information be provided concerning the enforcement of Bill 235 provisions. In particular, Bill 235 should provide standards and conditions for the monitoring and reporting of building energy strategies.

An effective strategy for maximizing energy conservation is through grants programs. Direct incentives to landlords to upgrade buildings and replace old equipment and appliances will directly contribute to energy savings. An added benefit is that tenants would be protected from rent increases that they might otherwise experience if the full cost of capital work were passed on into their rents. Bill 235 does not include provisions for incentive programs for building owners and tenants, which could be a useful mechanism in ensuring the conservation objectives of Bill 235 are met.

The City of Toronto provides funding for social housing providers, and currently about 28% of the City's conventional rental housing stock is social housing. However, under most of the City of Toronto's funding relationships, housing providers are limited to a specific amount for operating costs, regardless of their actual costs. This means that social housing does not respond to price signals in the same manner as market housing. Even if the installation of sub-meters were an effective energy efficiency strategy, social housing providers would have difficulty introducing such measures as a result of the financial constraints faced by their very vulnerable tenants. Accordingly, social housing providers wishing to sub-meter as an energy efficiency strategy may have difficulty doing so without specific incentive programs or assistance. Programs such as the City's *Better Buildings Partnership* and the *Social Housing Renovation and Retrofit Program (SHRRP)*, have successfully resulted in social housing providers investing in measures such as energy efficient heating systems, new windows and energy efficient appliances, among other strategies.

Recommendation 3: The City of Toronto recommends that: (a) Bill 235 include provisions requiring grants and other direct incentive programs to achieve energy conservation in multi-residential rental buildings and in social housing; and (b) the Province of Ontario provide permanent program status and funding to SHRRP.

2. *Tenant Protection*

About 90% of Ontario rental buildings are bulk-metered, which means landlords purchase electricity for the apartment building and then provide it to their tenants as a service included in the rent. Under

Bill 235, when a building switches to sub-metering, tenants pay for their own electricity use and in return, get a reduction to their rent. As indicated in our report "Installation of Smart Meters in Residential Rental Units and its Impacts on Tenant Affordability" (attached), there are significant concerns that smart metering in the multi-residential rental sector will increase the financial burden on low-income tenants.

While we appreciate the intention of MEI to provide regulatory guidance in the wake of the OEB's decision, the City of Toronto is concerned about the following issues in relation to tenant protection:

- Once a sub-metering relationship is consented to by a tenant, that tenant and all future tenants are bound by the relationship and there is no possibility for termination;
- While the landlord is obligated to improve energy efficiency of certain appliances, there are no standards suggested, no requirements outline for authorizing that the standard has been met, and no monitoring to ensure ongoing compliance with the standard is proposed;
- Other than the upgrading of certain appliances, there are no additional energy efficiency measures that the landlord must put in place;
- Reasonable limits on administrative fees charged to tenants, rate increases, and other fees and penalties that may be charged will be required;
- The relationship between landlords, tenants and sub-metering providers remains unclear. It appears that under Bill 235 landlords may discontinue energy to a rental unit where a tenant has not paid their bills to the sub-metering provider. The exact legal relationship between the three parties should be clarified in order to add certainty and respond to one of the issues outlined by the OEB;
- Bill 235 is silent on tenant education to ensure consent is informed and supports to help them reduce electricity use, and mechanisms that we ensure that tenants have voluntarily given informed consent. There is no "cooling off" period on the consent. Overall, Bill 235 appears to assume that the Landlord and Tenant Board will be available to resolve tenant concerns and disputes between landlords and tenants, transferring the burden of enforcing the obligations under the Act aimed at achieving provincial conservation goals to the parties. A proactive approach that avoids costly disputes is suggested; and
- As buildings are whole systems, there is an interrelationship between the types of energy used. As such, the regulations setting out the information to be provided to tenants and the required building efficiency standards should include a full assessment of building operation conditions.

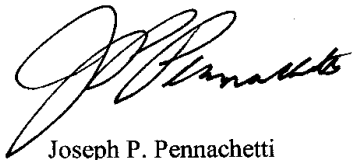
Recommendation 4: We recommend that MEI include the protections for tenants as outlined above.

Recommendation 5: We recommend that, as part of the implementation of Bill 235, information and training tools on energy saving measures be prepared, distributed and conducted for tenants.

Concluding comments:

As noted above, the City is concerned that Bill 235 does not include adequate measures to protect vulnerable tenants (who are already experiencing significant financial constraints) from the transfer of energy costs without sufficient protection, education and training. The City is also concerned that Bill 235 does not adequately address energy efficiency and may detract from conservation. The City of Toronto encourages MEI to modify Bill 235 in light of the concerns raised above, and requests that further consultation in relation to the bill take place. We also request that the corresponding Regulations be prepared and available throughout the consultation process on the Bill.

Yours truly,



Joseph P. Pennachetti
City Manager

cc. Mayor David Miller
Saad Rafi, Deputy Minister, Ministry of Energy and Infrastructure
Fareed Amin, Deputy Minister, Ministry of Municipal Affairs and Housing
Marg Rapport, Deputy Minister, Ministry of Community and Social Services

Attachments:

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