

The value of full disclosure

This article discusses the benefits of mandatory disclosure of a building's energy performance and how its future could impact the buying and selling of commercial properties.

Carolyn Sarno, Northeast Energy EfficiencyPartnerships (NEEP), Lexington, Mass.

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Residential and commercial buildings account for approximately 40% of U.S. greenhouse gas emissions and total energy consumption, according to the [U.S. Environmental Protection Agency \(EPA\)](#). Improving the energy performance of existing homes and buildings presents the biggest opportunity for energy savings, yet awareness of this largely untapped market is still relatively low.

While consumers are given energy performance ratings for everything from televisions to cars, documented evidence of a building's energy performance is not required to be presented to potential buyers or renters at any time during a sale or rental transaction in most states.

Much like an appliance energy rating label, building energy rating systems give consumers the tools to make informed choices and protect themselves against poor buildings and building components, higher-than-anticipated energy bills, discomfort, or unplanned renovation needs. A building energy rating also provides a market-based mechanism for creating a common currency regarding home or building energy use.

As states and municipalities work to strengthen their economies, create jobs, reduce greenhouse gas emissions, and achieve greater energy efficiency and independence, mandatory disclosure and upgrade policies offer an exciting new opportunity to value and secure significant energy savings.

Key concepts

Though mandatory building energy rating disclosure policies involve a wide array of specific policy and design choices, they focus on two key concepts.

1. Mandatory building energy disclosure policies: These policies seek to better inform the housing market by requiring that information about building energy performance be disclosed to potential buyers, renters, and the public;.
2. Mandatory upgrade policies: These policies require adoption of certain cost-effective energy efficiency measures in relation to that disclosure.

Brief history

First adopted more than a decade ago in Australia and Denmark, mandatory building energy rating policies are now in place in more than 30 countries worldwide. Internationally mature policies, such as Denmark's policy, where all homes and commercial buildings are required by law to obtain and disclose an energy performance rating, have expanded, and are now joined by recently developed policies across the European Union and elsewhere.

While take-up in America has been slower, this is rapidly changing as policy makers responsible for ambitious climate change and energy-efficiency goals search for policies that can go beyond traditional, incentive-based programs to transform markets.

At a federal level, the [U.S. Dept. of Energy \(DOE\)](#) is currently charged with developing a model building energy rating system that can be used by states in setting their own building energy rating policies. In recent years, over a dozen states and municipalities have seriously considered disclosure and/or upgrade legislation, with seven new policies in place as of last year. Some of the more recent policies include:

Seattle:

On Feb. 1, 2010, Seattle Mayor Mike McGinn signed a bill into law that mandates

- Disclosure of building performance for multifamily properties with five units or more
- Rating data disclosed upon request to a current tenant
- Energy performance data reported annually to the City of Seattle.

According to the bill, the city would disclose the data upon inquiry, but not post the data publicly. Commercial building owners will be required to report and disclose [Energy Star Portfolio Manager](#) benchmarking data and performance ratings.

Training and technical assistance is provided for building operators to understand the legislation while industry groups have been implementing programs to promote rating disclosure. In Seattle, the local Building Owners and Management Assn. chapter has developed the Kilowatt Crackdown challenge, a competition that challenges the real estate industry to reduce energy use through rating disclosure.

This ordinance builds on Washington State's law passed in 2009, where enforcement of the law includes citations, fines, and possible civil enforcement action. After an economic analysis was completed of this rating and disclosure program, the City of Seattle reported that the program would save more than 47 million kWh annually and create as many as 150 jobs.

New York City:

In December, city officials in New York enacted legislation that requires owners of large buildings to make an annual benchmark analysis of energy consumption so that owners, tenants, and potential tenants can compare buildings' energy consumption. Part of Mayor Bloomberg's [PlaNYC](#), the legislation requires owners of private buildings larger than 50,000 sq ft and city buildings over 10,000 sq ft to use a free online tool provided by the EPA to report and track buildings' annual energy and water consumption. Reporting is planned to begin in 2010 followed by disclosure in 2011.

The city is also implementing a program to train workers to perform these required upgrades, retrofits, and new construction. Additionally, the city is establishing a fund, using \$16 million in federal stimulus funding, to assist building owners in complying with the new laws.

Washington State:

On May 8, 2009, Washington Governor Chris Gregoire signed the state's Efficiency First bill into law. Part of this bill requires owners of nonresidential buildings to rate their buildings using Energy Star software and disclose that information to prospective buyers, lessees, and lenders prior to the closing of a transaction.

Nonresidential buildings greater than 50,000 sq ft are required to rate and disclose starting next year, while buildings greater than 10,000 sq ft are required to rate and disclose beginning Jan. 1, 2012.

For public buildings, state agencies must rate public facilities greater than 10,000 sq ft and disclose benchmarking data by July 1, 2010, to the state General Administration, which will make the information public. Beginning Jan. 1, 2010, state agencies may not sign a new lease or renew space in a private building with an Energy Star rating less than 75.

Also beginning Jan. 1, 2010, utilities are required, at the request of a building owner, to automatically upload energy consumption information for a building into Energy Star software.

Five ingredients for an effective policy

Indeed, when considering any type of disclosure, whether triggered (required at the time of sale or lease) or scheduled (required at regular intervals; applicable to commercial buildings only), an effective policy will require, above all else, five key ingredients:

- Market actors must believe that ratings reflect the relative performance of homes or buildings and trust that they have been produced honestly. This does not mean that energy audit models need be perfect, but that the rating is considered a reasonable indication of the relative performance of buildings.
- Clear messaging: The information disclosed, especially the overall building rating, must be meaningful to the average consumer. It must also allow prospective homes and buildings to be easily compared or, in the case of scheduled disclosure (commercial buildings), allow owners and operators to measure their performance over time.
- Strong enforcement: Mandatory disclosure policies are predicated on the ratings being ubiquitous; as such, high compliance rates are considered key to the policy's effectiveness. Both the Danish and Australian experiences strongly suggest that information campaigns and light penalties are insufficient. Instead, a combination of incentives, credible enforcement, and dissuasive penalties is deemed essential.
- Timely (early) disclosure: For triggered disclosure policies, such as time of sale, ratings must be displayed early in the process, i.e., in all advertising. If buyers receive the information only toward the end of the process—after having made an offer, for example, or when notarizing a sale—they will not be able to use that information effectively, and the policy will have forfeited its opportunity to influence the marketplace. Europe is in the process of correcting its initial error in this respect. Fortunately, multiple listing service systems in the Northeast are already beginning to offer this option.
- Link to action: Mandatory disclosure policies are an important tool in the toolbox to incent cost-effective energy savings, but are only a means to an end. To lead to action, the rating or audit report should assist consumers by recommending appropriate energy-efficiency improvements, providing financial analyses, referring to government or utility incentives, referencing financing opportunities, and providing options for more detailed analysis, such as investment grade audits for commercial buildings.

Moving forward

Though building energy rating and disclosure systems are gaining momentum across the country, many states could significantly increase their energy efficiency in public buildings simply by enforcing energy codes already adopted. A larger issue with current [International Energy Conservation Code \(IECC\)](#) upgrade requirements is a current lack of enforcement in many states. As discussed in NEEP's white paper on progressive building energy codes, "[Model Progressive Building Energy Codes Policy for Northeast States](#)," enforcement of codes is relatively lax even for new construction, with compliance typically ranging from 40% to 60%. Energy codes experts indicate that time of renovation compliance rates are even lower. Improving enforcement levels should be the first step in any upgrade policy initiative.

Most states have already adopted the IECC and ASHRAE 90.1 model codes, or have equivalent energy codes, with time of renovation provisions to bring additions and affected systems up to code. Improving compliance with these often poorly enforced provisions represents the low-hanging fruit of upgrade policies. One effective approach to improving enforcement is to move toward performance-based code compliance where building heat loss and build quality are more explicitly inspected and rated. An excellent vehicle for this type of approach can be modeled after NEEP's Informative Appendix, part of its Model Progressive Energy Codes Policy. The policy offers recommendations to adopt progressively more efficient building energy codes, improve the rate at which buildings and dwellings comply with the code, and measure the actual energy performance of buildings and dwellings.

This essay was adapted from a recent report commissioned by NEEP, "Valuing Building Energy Efficiency through Disclosure and Upgrade Policies." NEEP's report provides a guide for Northeast states, and beyond, that are considering the adoption of building energy rating policies by highlighting global case studies where such policies are already in place, and by identifying possible obstacles and tactics for overcoming them. The guide helps ensure that the policies themselves are designed in such a way as to be effective in adding real value to consumers, in achieving cost-effective energy savings, and in avoiding needless costs and disruptions. For more information visit www.neep.org/public-policy/building-energy-rating

Sarno manages [NEEP](#)'s Northeast High Performance School Exchange and oversees NEEP's Building Energy Codes Project. She has more than 11 years of facilities management experience. She assists states to adopt and implement advanced building design policies by providing training and information, responding to requests for information, conducting research, preparing materials and technical guidelines, and connecting groups with the experience and results of others working toward similar goals.