



NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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April 24, 2009

The Honorable Fred Upton
U.S. House of Representatives
2183 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton:

On behalf of the 1.2 million members of the NATIONAL ASSOCIATION OF REALTORS® (NAR), who are involved in residential and commercial real estate as brokers, sales people, property managers, appraisers, counselors, and others engaged in all aspects of the real estate industry, thank you for holding this important hearing on the American Clean Energy and Security Act.

NAR policy is committed to efforts to advance consumer understanding of the need for energy efficiency and reduce energy use. For several years, NAR's membership and the association itself have taken a number of actions to address this commitment, including:

- Building one of the first LEED Silver-certified office buildings in Washington, D.C.;
- Developing extensive member training and education programs including a Green certification for real estate professionals;
- Partnering with the U.S. Department of Energy on promoting its "Energy Savers" brochure to our members and their clients; and
- Sponsoring significant research on building related energy issues.

Given the importance of this issue, we appreciate the opportunity to share the views of the Realtor® community.

REALTORS® Support Many Provisions

Regulatory Preemptions (Section 331)

We applaud the draft's provisions to preempt EPA regulation of carbon emissions under the Hazardous Air Pollutant, Prevention of Significant Deterioration (PSD) and Title V programs of the Clean Air Act. Without these critical preemptions, EPA would be required to regulate multi-family and commercial buildings exceeding emissions equivalent to a 10- to 20-unit building. The law would prohibit construction or modification of these buildings without first obtaining EPA permits prescribing the best available control technology, which according to EPA, could include solar panels or high efficiency boilers. Table 1 presents the potential paperwork impacts of PSD and Title V permits based on EPA data if Congress fails to pass these provisions. We strongly support these

provisions and urge the Subcommittee to expedite their passage either on a stand-alone basis or as part of must-pass legislation.

PERMIT	COMMERCIAL BUILDINGS	TOTAL COST (\$Thousands)	HOURS
Construction (PSD)	24,200	2,000,000	21,000,000
Operating (Title V)	85,100	3,900,000	28,900,000
Source: EPA estimates.			

Retrofit Incentives Program (Section 202)

This section provides state funding to incentivize home and building energy efficiency improvements. Provisions of this section are identical to H.R. 1778 (the Retrofit for Energy and Environmental Performance Program Act) sponsored by Rep. Welch (D-VT) which NAR supports. We believe that providing families and building owners with the financial incentives that they need to retrofit their homes and buildings is critical if substantial energy savings are to be achieved in the near term. We support this section and urge the Subcommittee to retain this section in lieu of section 204 on Energy Star labeling (more below), which could undermine the housing market’s recovery particularly where older and historic housing stocks are involved.

Items Requiring Additional Clarification

Energy Star Building Labels (Section 204)

As stated earlier, NAR is committed to efforts to advance consumer understanding of the need for energy efficiency and reduce energy use. We are concerned, however, with (1) the bill’s provisions to create a system of energy labels for homes and buildings and (2) the suggested triggers for state implementation of a labeling program. NAR’s members believe that these provisions will impose burdens on consumers and an already troubled housing market – without improving the energy efficiency of our nation’s building stock in a timely manner.

Labeling every home in America will not improve building efficiency. The label will stigmatize older properties and further reduce property values in many areas around the country. At a time when retirement savings and property values have plummeted, many families and commercial property owners do not have the financial resources or equity to make needed energy-related improvements such as replacing aging heating and cooling systems, appliances or windows. Adding to the cost of homeownership will complicate the economic concerns that homeowners are already facing.

We are especially concerned with provisions that suggest label disclosure requirements around the time of sale. While the bill suggests that labels could be made available at several points, it nevertheless states that the information must be “more fully factored into market transactions.” As a practical matter, states will read this as a requirement to receive federal funding. Labeling and

disclosure will be implemented at the time of sale -- one of the “optional” trigger points in bill. Our members’ experiences with sales transactions indicate that labels will become a bargaining chip at closing to negotiate down selling prices without any assurance that energy-related improvements are made. In addition, with less than a very small percentage of homes changing hands each year even in a robust market, such an approach will prove ineffective at meeting the stated goals of the legislation in a timely manner.

Before prescribing new requirements for branding homes and buildings with labels, consumers require a better understanding of energy efficiency and, just as importantly, must be given the financial resources and incentives to make needed energy improvements. NAR strongly supports the bill’s provisions that will provide the financial incentives needed by consumers to improve homes and buildings and result in significant energy savings in the very near term. But labels will not achieve either goal.

We respectfully urge the Committee to strike this labeling section in favor of retaining retrofit incentive programs in section 202, as the most effective program to improve energy efficiency in America’s homes and buildings.

National Building Codes (Section 201)

Every few years, the International Code Council (ICC) and American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) update model codes and standards for residential and commercial construction, and the vast majority of states have chosen to adopt later models. The U.S. Department of Energy (DOE) already participates in the process, which is voluntary and consensus driven.

Under the bill, DOE is directed to modify future model standards to meet national targets for a 30% reduction in energy consumption over 2004/2006 models. In 2016, the target increases to 50%. States would have to update their building codes to meet the targets in order to receive bill funding. They must also show compliance in at least 90 percent of new and renovated building space. Only renovations with a building permit are covered, and DOE is given discretion to reduce the targets for renovations.

We have several concerns with these provisions:

1. We question the economic achievability of the 50% reduction target. Both the ICC and ASHRAE believe that more than 30% within such a short timeframe is impractical—particularly given the diversity of building types covered by the IECC and Standard 90.1.
2. We are concerned with the new DOE authority as it could detract from a process that has resulted in significant energy savings particularly over the last several years.
3. New construction standards would apply to any renovation with a building permit, but depending on jurisdiction, a building permit may be required for even minor projects. Examples include:
 - a. Replacing a garbage disposal (Fairfax County), dishwasher (Charlotte), garage door (Minneapolis), or interior wall covering (Washington, D.C.);
 - b. Repairing siding/stucco (San Francisco) or dry rot/termites (Culver City, CA); and
 - c. Apply fire-retardant paint (D.C.) or adding a patio trellis (Culver City).

We request that the Subcommittee limit new construction standards to major renovations involving significant modifications or expenditures relative to property space or value. We also encourage reconsideration of the 50% reduction target and new standard setting authority for DOE.

Private Right of Action (Section 336)

This section would expand the Clean Air Act's private right of action to "include any person who has suffered, or reasonably expects to suffer, a harm" due to a law violation or EPA's failure to act. "Harm" is defined as "any effect" that is "currently occurring or at risk of occurring" including "small incremental emissions of any air pollutant ... whether or not the effect or risk is widely shared."

We read this as potentially providing legal standing to virtually anyone with any claim, whether real or imagined. The harm may be small and does not have to be wide spread. There need not be actual harm – simply showing the risk of harm is sufficient. We are deeply troubled by these provisions, and urge the Subcommittee to strike them.

Transportation (Section 841)

This section requires states and metropolitan planning organizations (MPOs) for metro areas with a population of more than 200,000, to include new elements in transportation plans they are currently required to prepare to qualify for federal transportation funds. New planning elements are to make transportation more efficient and thus reduce greenhouse gas emissions.

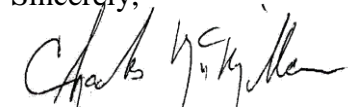
NAR believes that local land use issues are most appropriately resolved at the local level and that withholding funds is not an appropriate approach. In addition, it is not clear how these provisions relate to those in the upcoming highway bill, which must be reauthorized later this year. We respectfully ask the Committee to reconsider including these provisions in this bill.

Conclusion

We appreciate the Subcommittee's efforts to craft legislation that encourages and promotes energy efficiency in our nation's homes and buildings.

Thank you for the opportunity to share the views of our Realtor® members. We look forward to continuing to work with the Subcommittee on this important piece of legislation.

Sincerely,



Charles McMillan, CIPS, GRI

2009 President

National Association of REALTORS®