

October 23, 2007

The Honorable Jeff Bingaman, Chair
Senate Energy and Natural Resources Committee
304 Dirksen Senate Office Building
Washington, DC 20510-6150

The Honorable John D. Dingell, Chair
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515-6115

Re: **Impact of Section 9031 of HR 3221 on the U.S. Standards Development System**

Dear Chairmen Bingaman and Dingell:

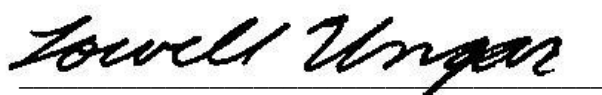
Throughout Congressional consideration of HR 6 and HR 3221 our organizations have remained in consultation with each other regarding the manner in which Section 9031 of HR 3221 should best promote and affect the development and usage of building energy efficiency codes and standards.

Each of our organizations has communicated with Congress regarding this section, and each agrees that the work of the Department of Energy (DOE) in executing federal energy policy should be carried out in a fashion consistent with the National Technology Transfer and Advancement Act (NTTAA) of 1995. We have been working together on language that both empowers the DOE to fully carry out this role and facilitates the agency's participation in and utilization of model codes and standards developed by consensus in the non-governmental sector.

We wish to advise you of our common view of how Section 9031 should be modified, and have enclosed a document that sets forth these proposed modifications. With these modifications, ASHRAE and ICC withdraw objections regarding the impact of the Section on the manner in which codes and standards are developed for use in America. With these changes, DOE would fully participate in and support the processes of voluntary consensus standards development managed by ICC and ASHRAE. If, after publication, a building code or standard is determined by DOE to not fully achieve a national target, the DOE is empowered to add amendments necessary to carry out its responsibilities in meeting the established target.

We appreciate your review of the attached proposal for revision of Section 9031 of HR 3221.

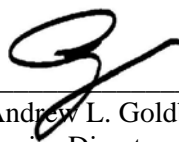
Sincerely,



Lowell Ungar
Director of Policy
Alliance to Save Energy



Mark K. Dinneen
VP Congressional Relations
International Code Council



Andrew L. Goldberg
Senior Director, Federal Affairs
The American Institute of Architects



Kent W. Peterson
President
American Society of Heating, Refrigerating and Air
Conditioning Engineers

House Advanced Building Codes Provision with Proposed Edits

SEC. 9031. ENCOURAGING STRONGER BUILDING CODES.

(a) IN GENERAL.—Section 304 of the Energy Conservation and Production Act (42 U.S.C. 6833) is amended to read as follows:

“SEC. 304. UPDATING STATE BUILDING ENERGY EFFICIENCY CODES.

“(a) UPDATING NATIONAL MODEL BUILDING ENERGY CODES.—(1) The Secretary shall support updating the national model building energy codes and standards at least every three years to achieve overall energy savings, compared to the 2006 IECC for residential buildings and ASHRAE Standard 90.1 2004 for commercial buildings, of at least—

“(A) 30 percent in editions of each model code or standard released in or after 2010;

“(B) 50 percent in editions of each model code or standard released in or after 2020; and

“(C) targets for intermediate and subsequent years to be set by the Secretary at least 3 years in advance of each target year, coordinated with the IECC and ASHRAE Standard 90.1 cycles, at the maximum level of energy efficiency that is technologically feasible and life-cycle cost effective.

“(2)(A) Whenever the provisions of the IECC or ASHRAE Standard 90.1 regarding building energy use are revised, the Secretary shall, not later than 12 months after the date of such revision, determine—

“(i) whether such revision will improve energy efficiency in buildings; and

“(ii) whether such revision will meet the targets under paragraph (1).

“(B) If the Secretary makes a determination under subparagraph (A)(ii) that a code or standard does not meet the targets under paragraph (1), or if a national model code or standard is not updated for more than three years, then the Secretary shall within 12 months establish a modified code or standard that meets such targets. Any such modified code or standard—

(i) shall achieve the maximum level of energy savings that are technically feasible and economically justified, incorporating available appliances, technologies, and construction practices;

(ii) shall be achieved through amendments or additions to the latest revision of the IECC or ASHRAE Standard 90.1 but may consider other model codes or standards; and

(iii) shall serve as the baseline for the next determination under subparagraph (A)(i).

“(C) The Secretary shall provide the opportunity for public comment on targets, determinations, and modified codes and standards under this subsection, and shall publish notice of targets, determinations, and modified codes and standards under this subsection in the Federal Register.

“(b) STATE CERTIFICATION OF BUILDING ENERGY CODE UPDATES.—(1) Not later than 2 years after the date of enactment of the Energy Efficiency Improvement Act of 2007, each State shall certify to the Secretary that it has reviewed and updated the provisions of its residential and commercial building codes regarding energy efficiency. Such certification shall include a demonstration that such State’s code provisions meet or

exceed the 2006 IECC for residential buildings and the ASHRAE Standard 90.1-2004 for commercial buildings, or achieve equivalent or greater energy savings.

“(2)(A) If the Secretary makes an affirmative determination under subsection (a)(2)(A)(i) or establishes a modified code or standard under subsection (a)(2)(B), each State shall within 2 years certify that it has reviewed and updated the provisions of its building code regarding energy efficiency. Such certification shall include a demonstration that such State’s code provisions meet or exceed the revised code or standard, or achieve equivalent or greater energy savings.

“(B) If the Secretary fails to make a determination under subsection (a)(2)(A)(i) by the date specified in subsection (a)(2), or makes a negative determination, each State shall within 2 years after the specified date or the date of the determination, certify that it has reviewed the revised code or standard, and updated the provisions of its building code regarding energy efficiency to meet or exceed any provisions found to improve energy efficiency in buildings, or to achieve equivalent or greater energy savings in other ways.

“(c) STATE CERTIFICATION OF COMPLIANCE WITH BUILDING CODES.—(1) Each State shall, not later than 3 years after a certification under subsection (b), certify that it has achieved compliance with the certified building energy code. Such certification shall include documentation of the rate of compliance based on independent inspections of a random sample of the new and renovated buildings covered by the code in the preceding year.

“(2) A State shall be considered to achieve compliance under paragraph (1) if—

“(A) at least 90 percent of new and renovated buildings covered by the code in the preceding year substantially meet all the requirements of the code; or

“(B) the estimated excess energy use of new and renovated buildings that did not meet the code in the preceding year, compared to a baseline of comparable buildings that meet the code, is not more than 10 percent of the estimated energy use of all new and renovated buildings covered by the code in the preceding year.

“(d) FAILURE TO MEET DEADLINES.—(1) A State that has not made a certification required under subsection (b) or (c) by the applicable deadline shall submit to the Secretary a report on--

“(A) the status of the State with respect to meeting the requirements and submitting the certification; and

“(B) a plan for meeting and requirements and submitting the certification.

“(2) The Secretary shall permit extensions of the deadlines for the certification requirements under subsections (b) and (c) of this section for up to 1 year if a State demonstrates in the report under paragraph (1) that it has made a good faith effort to comply with such requirements and that it has made significant progress in doing so, , including by developing and implementing a plan under paragraph (1)(B).

“(3) Any State for which the Secretary has not accepted a certification by a deadline under subsection (b) or (c) of this section, with any extension granted under paragraph (2), is out of compliance with this section.

“(4) In any State that is out of compliance with this section, a local government may be in compliance with this section by meeting the certification requirements under subsections (b) and (c) of this section.

“(5) The Secretary shall annually submit to Congress, and publish in the Federal Register, a report on the status of national model building energy codes and standards, the status of code adoption and compliance in the states, and implementation of this section. The report shall include estimates of impacts of past action under this section and potential impacts of further action on lifetime energy use by buildings and resulting energy costs to individuals and businesses.

“(e) TECHNICAL ASSISTANCE.—(1) The Secretary shall on a timely basis provide technical assistance to model code-setting and standard development organizations. This assistance shall include technical assistance as requested by the organizations in evaluating code or standards proposals or revisions, building energy analysis and design tools, building demonstrations, and design assistance and training. The Secretary shall submit code and standard amendment proposals, with supporting evidence, sufficient to enable the national model building energy codes and standards to meet the targets in subsection (a)(1).

“(2) The Secretary shall provide technical assistance to States to implement the requirements of this section, including procedures for States to demonstrate that their code provisions achieve equivalent or greater energy savings than the national model codes and standards, and to improve and implement State residential and commercial building energy efficiency codes or to otherwise promote the design and construction of energy efficient buildings..

“(f) AVAILABILITY OF INCENTIVE FUNDING.—(1) The Secretary shall provide incentive funding to States to implement the requirements of this section, and to improve and implement State residential and commercial building energy efficiency codes, including increasing and verifying compliance with such codes. In determining whether, and in what amount, to provide incentive funding under this subsection, the Secretary shall consider the actions proposed by the State to implement the requirements of this section, to improve and implement residential and commercial building energy efficiency codes, and to promote building energy efficiency through the use of such codes.

“(2) Additional funding shall be provided under this subsection for implementation of a plan to achieve and document at least a 90 percent rate of compliance with residential and commercial building energy efficiency codes, based on energy performance—

“(A) to a State that has adopted and is implementing, on a Statewide basis—

“(i) a residential building energy efficiency code that meets or exceeds the requirements of the 2006 IECC, or any succeeding version of that code that has received an affirmative determination from the Secretary under subsection (a)(2)(A)(i); and

“(ii) a commercial building energy efficiency code that meets or exceeds the requirements of the ASHRAE Standard 90.1-2004, or any succeeding version of that standard that has received an affirmative determination from the Secretary under subsection (a)(2)(A)(i); or

“(B) in a State in which there is no Statewide energy code either for residential buildings or for commercial buildings, or where State codes fail to comply with subparagraph (A), to a local government that has adopted and is implementing residential and commercial building energy efficiency codes, as described in subparagraph (A).

“(3) Of the amounts made available under this subsection, the Secretary may use amounts required, not exceeding \$500,000 for each State, to train State and local officials to implement codes described in paragraph (2).

“(4)(A) There are authorized to be appropriated to carry out this subsection—

“(i) \$35,000,000 for each of fiscal years 2008 through 2012; and

“(ii) such sums as are necessary for fiscal year 2013 and each fiscal year thereafter.

“(B) Funding provided to States under paragraph (2) for each fiscal year shall not exceed one-half of the excess of funding under this subsection over \$5,000,000 for the fiscal year.”.

(b) DEFINITION.—Section 303 of the Energy Conservation and Production Act (42 U.S.C. 6832) is amended by adding at the end the following new paragraph:

“(17) The term ‘IECC’ means the International Energy Conservation Code.”.