

STATEMENT FOR THE RECORD

U.S. Senate Committee on Indian Affairs

Hearing of November 18, 2010 on HR 4347

Statement of:

International Code Council

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The International Code Council (ICC) is a membership association dedicated to building safety, fire prevention, and energy efficiency. The International Codes, or I-Codes, published by ICC, provide minimum safeguards for people at home, at school and in the workplace. Building codes benefit public safety and support the industry's need for one set of codes without regional limitations. Fifty states and the District of Columbia have adopted the I-Codes at the state or jurisdictional level. The District of Columbia, and the U.S. Virgin Islands. Federal agencies including the Architect of the Capitol, General Services Administration, National Park Service, Department of State, U.S. Forest Service and the Veterans Administration also enforce the I-Codes. The Department of Defense references the International Building Code for constructing military facilities, including those that house U.S. troops, domestically and abroad.

The International Code Council was established in 1994 as a non-profit organization dedicated to developing a single set of comprehensive and coordinated national model construction codes. The founders of the ICC are Building Officials and Code Administrators International, Inc. (BOCA), International Conference of Building Officials (ICBO), and Southern Building Code Congress International, Inc. (SBCCI). Since the early part of the last century, these non-profit organizations developed three separate sets of model codes used throughout the United States. Although regional code development has been effective and responsive to our country's needs, the time came for a single set of codes. The nation's three model code groups responded by creating the International Code Council and by developing codes without regional limitations; the International Codes.

The ICC is strongly in favor of H.R. 4347 for several reasons. First, and most importantly, we believe in the proven ability of tribes to provide efficient, strong, and accountable government for themselves, affirming their position as sovereign entities residing cooperatively within the borders of the United States. Prior testimony to this committee by members of self-governing tribes speaks to that fact.

Second, and perhaps most relevant to the ICC, is the language contained within Section 408(d)(1). It is our experience that code adoption and enforcement typically works best at more local levels of government, as they are usually the best equipped to make decisions on how to fit our model codes most appropriately to their individual needs, including considerations of climate, susceptibility to

natural disasters, budgetary feasibility, and dozens of others.

This principle could hardly be more applicable than in the cases of American Indian and Native Alaskan tribes. A federal mandate of a single code adoption across every tribe from Alaska to Florida not only seriously undercuts the very idea of self-governance promoted in this bill, but also would apply the same rules to vastly different climates, populations, and even cultures with their own architectural heritage dating back hundreds (if not thousands) of years.

Thus, we believe it imperative that Section 408(d)(1) be interpreted as recognizing tribally adopted codes as controlling, as is done throughout the United States in the case of locally adopted codes. We are pleased that several tribes have chosen to adopt the International Codes we develop and publish. No tribe, nor any state or local jurisdiction in the United States, has adopted the NFPA 5000 building code the Bureau of Indian Affairs (BIA) recommends. Yet the NFPA code is exactly what would be forced upon every self-governing tribe under this bill if Section 408(d)(1) were interpreted to grant the BIA the power to require its recommended code on all federally funded projects.

While we are informed by some who have been involved in the drafting of the language of this legislation that the intent is to give the tribes authority to determine their own building codes, and to have those locally adopted codes govern construction projects on tribal lands, we are concerned that the language of Sec 408(d)(1) is susceptible to misinterpretation. This section could be read by the BIA as requiring projects to adhere to BOTH tribal building codes AND Federal codes. This would create a conflict, and increase costs of construction for the tribes, if BIA continues to specify the NFPA 5000 code as its preferred building code, since no tribes or local governments use that code.

We believe tribes should have the right, as do all state, county and municipal jurisdictions in the United States, to consider and adopt the model building codes appropriate to their situation. In every case, tribes and local jurisdictions have chosen to adopt the international Building Code, or its predecessor regional codes. The right of tribes to choose and enforce building codes would be rendered meaningless if Sec. 408(d)(1) is interpreted to require projects to meet both tribal and BIA codes. We urge the Committee to favorably recommend this bill for passage, and to make clear its intent in its Report accompanying the legislation, regarding this section of the bill.

The following language, in the Report, would make crystal clear the intent of the legislation:

“Sec. 408(d)(1): Where a tribe has adopted its own nationally recognized building code, it is the intent of this section that adherence to such tribally adopted code, would meet the requirement of this section.”

As the Chairman and other Committee members made clear during the hearing on HR 4347 on November 18, the BIA has consistently delayed and obstructed the ability of tribes to achieve full self-governance, even when legislation has specifically authorized such self-governance. We urge the Committee to insure that its intent is clear and unambiguous, to prevent such delays and obstruction in the future under the provisions of this legislation. We appreciate the committee taking note of our comments and concerns relating to this legislation.