



2120 L Street, NW, Suite 700
Washington, DC 20037

T 202.822.8282
F 202.296.8834

HOBBSSTRAUS.COM

October 26, 2012

GENERAL MEMORANDUM 12-123

Senate Action on Energy Efficiency Likely in Upcoming Months

During the period after the November 6 elections but before the end of the calendar year, Congress convenes in a session commonly referred to as the "lame duck" session. During this session, legislation to promote energy efficiency is a likely candidate for action by the Senate. Of particular interest to tribes, this legislation would amend the authorizing statute for the federal building energy codes assistance program to explicitly include tribes.

The legislation to which we are referring was introduced in May 2011 as S 1000, the Energy Savings and Industrial Competitiveness Act. It was reported out of the Energy and Natural Resources Committee in September 2011 as S. Rept. 112-71. In a recent development, the sponsors of the bill, Senators Shaheen (D-NH) and Portman (R-OH), have repackaged the bill as an amendment and have indicated the intent to attach it to almost any bill that has a good chance of being passed in the lame duck session.

This legislation includes five subtitles: (A) Buildings; (B) Building Energy Finance; (C) Industrial Efficiency and Competitiveness; (D) Federal Agency Energy Efficiency; and (E) Miscellaneous. The scope of this memorandum is limited to the provisions relating to building energy codes, which are found in Subtitle A.

Part I of Subtitle A would amend the Energy Conservation and Production Act, which was originally enacted in 1976. Amendments enacted by the Energy Policy Act of 1992 authorize the federal government to promote the development of model codes for energy efficiency in new buildings (residential and commercial) and to encourage states to periodically update their building codes to adopt, or exceed, the energy efficiency standards in the model codes. 42 U.S.C. § 6833. This section of the statute was substantially amended by the Energy Policy Act of 2005.

Pursuant to this statutory authority, the Department of Energy (DOE) administers the Building Energy Codes Program. See <http://www.energycodes.gov/>. While this program has been in existence for about two decades, tribal governments have not been treated as eligible for assistance. Tribes are not explicitly made ineligible; they just seem to have been ignored. The pending legislation would begin to rectify the omission of tribes from the Building Energy Codes Program by adding "Indian tribes" at a number of points in the statutory language, generally treating tribes in the same manner as states are currently treated under the law. It would include tribes in the mandate to periodically review their building codes and consider adopting updated standards. The legislation makes clear that states and tribes would not be required to adopt the updated standards,

and there is no penalty for failing to do the review, except that doing so is a factor in obtaining financial assistance from DOE. The legislation would also authorize the Secretary of Energy to provide assistance for the development of model building energy codes for adoption by tribes in accordance with tribal law.

In addition to the language dealing with building codes, section 221 of this legislation would authorize DOE to provide grants to tribal colleges and other higher education institutions to establish building training and assessment centers. Such centers could perform a range of functions, including training for engineers, architects, building scientists, permitting and enforcement officials, and building technicians.

There are no express references to Indian tribes in the other four subtitles of this legislation, although some of the programs authorized by these subtitles could be implemented in ways that do reach Indian Country. For example, Subtitle B on Building Energy Finance would authorize DOE to create a loan guarantee or "credit support" program to help finance investments to retrofit existing buildings for energy efficiency, advanced metering, distributed generation, or renewable energy. Several kinds of buildings would be eligible, including commercial, multifamily residential, industrial, municipal, government, institutions of higher education, schools, and hospital facilities.

Subtitle D on Federal Agency Energy Efficiency includes programs to promote efficiency in personal computers, advanced energy metering, and the design of new buildings. Tribes may have interests in the federal agencies that serve their communities participating in such programs.

Subtitle D would also amend the requirement, enacted in 2005, for federal agencies to purchase a portion of their electric power from renewable sources. 42 U.S.C. § 15852. This requirement would be expanded to also cover thermal energy. The existing law gives double credit for renewable energy produced on Indian land. The pending legislation would add language to clarify how such energy is to be calculated.

If you would like more information regarding the Energy Savings and Industrial Competitiveness Act, please let us know.

###

Inquiries may be directed to:

Dean Suagee (dsuagee@hobbsstrauss.com)

Moriah O'Brien (mobrien@hobbsstrauss.com)