

ENVIRONMENTAL LAW

Expert Analysis

Energy Efficiency Improvement Act of 2015: Trend or Oddity?

On April 30, President Barack Obama signed into law the Energy Efficiency Improvement Act of 2015 (EEIA), a much pared-down version of a bill that Sen. Jeanne Shaheen (D-N.H.) and Sen. Rob Portman (R-Ohio) have been pushing for several years. Several other energy-efficiency bills just underwent hearings in Congress. At the same time, the House Appropriations Committee has just voted to slash federal research on energy efficiency, and several bills to impede efficiency efforts are advancing.

Thus it remains to be seen whether the EEIA has broken the logjam on energy-efficiency legislation, and will be followed by a gush of other bills, or is an anomaly in a Congress that is much friendlier to fossil fuels than to clean energy.

This column begins with a description of the new enactment. It then discusses the other pending energy-efficiency legislation, and it concludes with a summary of the appropriations actions.

Federal Buildings

Title I of the EEIA aims to improve the energy efficiency of federal leased buildings, and to provide a model for private real estate transactions.

A major impediment to energy efficiency in leased buildings is the split incentive problem. Landlords may have to pay the capital cost of efficiency measures, but tenants who pay their own utility bills reap the savings; or tenants pay for the work, but they still pay a fixed portion of total building utility bills. As a result, many cost-effective improvements are not undertaken. “Green leases” have emerged as a way to align the interests of building owners and tenants by sharing the costs and savings.

The federal government is a tenant in many buildings and the landlord in many others. The

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EEIA requires the Administrator of General Services (who manages much of the federal government’s real estate) to develop model commercial leasing provisions that encourage building owners and tenants to collaborate to invest in energy- and water-efficiency measures. These provisions may then be used in leases to which the federal government is a party, and they will be published to encourage private sector parties to use them as well.

The EEIA also requires the Department of Energy to undertake a study of ways to create and promote areas within commercial buildings that employ high-performance energy-efficiency measures, such as ways to reduce the energy intensity of lighting, heating, cooling, cooking, laundry, and plug load (equipment that is plugged into the wall).

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Title I also requires the Environmental Protection Agency, working with the Department of Energy, to develop a voluntary “Tenant Star” program to promote energy efficiency in spaces occupied by tenants. This would be modeled

on the Energy Star program, which has successfully recognized efficient buildings, appliances, electronics, office equipment, and other products. Under Tenant Star, public recognition can be given to tenants in commercial buildings that achieve high efficiency levels in the spaces they occupy. Implementation is probably at least two years away.

Tenant Star will share some of the objectives of the New York City Carbon Challenge, a program in which numerous universities, hospitals, residential management firms, and others have pledged to reduce their building-based emissions by 30 per cent or more in 10 years.

Grid-Enabled Water Heaters

Water heaters are major consumers of energy, and in 2010 the Department of Energy issued efficiency standards that will require a more efficient technology for large water heaters. However, many rural electric cooperatives use certain types of large water heaters as a means of energy storage and demand response—that is, shaving peak power demand by heating the water at other times of day.

Title II of the EEIA provides relief from the energy-efficiency standards for water heaters that are used in this fashion.

Efficiency Benchmarking

Several states and cities (including New York) have adopted programs requiring the owners of large buildings to report on their electricity and natural gas consumption. The cities then compile this information and publish it in a way that allows the energy use of buildings of comparable size and purpose to be compared. This exercise allows less efficient buildings to be identified and, hopefully, improved. It also enhances the marketability and possibly the rents of the more efficient buildings.

Title III of EEIA mandates a nationwide study of state and local energy benchmarking and disclosure policies for commercial and multifamily buildings. This study will identify best practices, compliance rates, and other factors.

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The new law requires the Department of Energy to maintain a nationwide database of the information compiled in benchmarking and disclosure programs. It also requires federal agencies leasing buildings without Energy Star labels to engage in benchmarking and to disclose the results.

Other Pending Legislation

Senators Shaheen and Portman have been pushing energy-efficiency legislation since 2011. Despite widespread support from both sides of the aisle and from many business and environmental groups, this legislation has been held up by disputes over other contentious issues, most recently the Keystone XL Pipeline. When the EEIA

age state and local governments to adopt model building codes; adjust underwriting criteria and home valuation in federally assisted housing loans to account for expected energy cost savings from efficiency measures; establish a "Supply Star" program, modeled after Energy Star, to promote highly efficient supply chains; and launch several initiatives to reduce energy use by data centers.

- **S. 600, Energy Efficiency Retrofit Pilot Program.** This would provide matching grants to help nonprofit organizations save energy.

- **S. 723, Utility Energy Service Contracts Improvement Act.** These contracts allow utilities and the federal government to enter into long-term agreements to save energy. This bill would allow them to last as long as 25 years.

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On April 30—the same day that President Obama signed the EEIA—both the House (through the Subcommittee on Energy and Power of the Committee on Energy and Commerce) and the Senate (through the Energy and Natural Resources Committee) held hearings on energy-efficiency legislation. Any resulting efficiency provisions would probably be part of a much larger energy bill; Congress has not enacted a major piece of energy legislation since 2007 (though the American Recovery and Reinvestment Act of 2009 included large amounts of money for many energy programs), and several important issues have accumulated.

The Senate hearing concerned 22 separate energy-efficiency bills. According to an analysis by the American Council for an Energy Efficient Economy (ACEEE), several of these bills have strong bipartisan support. Thus they have a decent chance of being included in a comprehensive energy bill. These include:

- **S. 720, Energy Savings and Industrial Competitiveness Act.** This is the larger Shaheen-Portman bill from which the three titles of the EEIA were taken. Among many other things, it would require the Department of Energy to set energy savings targets for and help and encour-

- **S. 858, Energy Savings Through Public-Private Partnerships.** This bill would clarify ambiguous provisions in the Energy Savings Performance Contracting statute.

According to the ACEEE, several other bills have the potential for strong bipartisan support, though most were recently introduced and have not had the time to garner such support. Among them are:

- **S. 1046, Smart Building Acceleration Act.** This would encourage expanded use of smart building technologies.

- **S. 1052, Benchmarking.** This would go beyond the EEIA in promoting benchmarking in commercial buildings.

- **S. 1044, Access to Consumer Energy Information.** This would require the Department of Energy to establish voluntary guidelines for consumer access to consumers' own energy consumption information, which could help consumers obtain assistance from energy service providers.

Several others bills could receive substantial bipartisan support, but they all have significant cost, and thus could require authorization offsets. These include the reauthorization of the low-income Weatherization Assistance Program and the State Energy Program; a pilot program for state loans for energy-efficiency upgrades in residential buildings; and a competitive program to help states improve energy productivity (a measure of the amount of goods and services provided in the economy per unit of energy use).

Bills Impeding Efficiency

All bills discussed above would improve energy efficiency. Other pending bills would go in the other direction.

S. 1048 would prevent the Department of Energy from revising the efficiency standards for ceiling fans. Along similar lines, S. 1029 would create new procedures for the updating of efficiency rules for residential furnaces, substantially delaying their finalization.

The Energy Independence and Security Act of 2007 (the last major energy law passed by Congress) calls on the federal government to eliminate fossil fuel energy by 2030 in new federal buildings and those that undergo major renovations. Regulations to implement this requirement have been stalled for several years. Several bills have been introduced that would repeal this requirement. Some of them are coupled with stronger energy-efficiency requirements and thus have garnered support from some efficiency advocates.

The House Committee on Energy and Commerce has released a discussion draft of a bill that includes some of the efficiency and anti-efficiency provisions above and that would reduce the Department of Energy's ability to help develop and oversee state energy codes. It would weaken the department's role in certifying state code submissions; bar the department from participating in various aspects of code development; and bar department assistance for energy codes that do not meet certain constrained payback period requirements.

Appropriations

On May 1 the House passed H.R. 2028, the appropriations bill for the Department of Energy, the Army Corps of Engineers and other agencies for fiscal year 2016. It passed 240-177, mostly along party lines. The bill would increase fossil fuel programs by \$34 million, and cut renewable energy and efficiency programs by \$279 million compared to current spending levels.

The bill would also prevent the Department of Energy from enforcing the standards in the 2007 energy law that have in effect phased out most traditional incandescent light bulbs, as well as restricting new furnace and ceiling fan standards.

President Obama has threatened to veto this bill, warning that it "drastically underfunds" energy programs.