

Explanatory Statement on Section 410, Recovery Act (HR1) by National Building Community Stakeholders (November 18, 2009)

Since the passage of the American Recovery and Reinvestment Act (ARRA) in February, 2009, State Energy Program (“SEP”) funding tied to building energy code adoption and enforcement has been the subject of much discussion and debate. The objective of this statement is to clarify the intention of the statute and to offer assistance to state and local governments to advance building energy efficiency codes, including code adoption, training in the operation of the codes and efforts at compliance and enforcement. We recognize that success in this area will not be easy but we have joined together to help. In an effort to provide accurate, understandable, and actionable information to states, local governments and the organizations and entities that support greater energy efficiency in the built environment, the undersigned groups offer the following information about Sec. 410, of ARRA.

The actual statutory provision is as follows:

Section 410 (a) (2)

The State, or the applicable units of local government that have authority to adopt building codes, will implement the following:

- (A) A building energy code (or codes) for residential buildings that meets or exceeds the most recently published International Energy Conservation Code, or achieves equivalent or greater energy savings.
- (B) A building energy code (or codes) for commercial buildings throughout the State that meets or exceeds the ANSI/ASHRAE/IESNA Standard 90.1-2007, or achieves equivalent or greater energy savings.
- (C) A plan for the jurisdiction achieving compliance with the building energy code or codes described in subparagraphs (A) and (B) within 8 years of the date of enactment of this Act in at least 90 percent of new and renovated residential and commercial building space. Such plan shall include active training and enforcement programs and measurement of the rate of compliance each year.

Some of the descriptions of this statutory language provided by third parties have resulted in inaccurate information and confusion among those who are involved in meeting the requirements of this Act.

The key points are as follows:

- 1- **Conditions for Acceptance of ARRA funding.** All 50 state governors have submitted letters to the Department of Energy, providing assurances that their states would comply with the terms of Section 410. All 50 states have accepted SEP funds that were conditioned on these assurances. Therefore, all 50 states have committed to do three things:

- a. Adopt a building energy code for residential buildings that meets or exceeds the 2009 IECC;¹
- b. Adopt a building energy code for commercial buildings that meets or exceeds the ANSI/ASHRAE/IESNA Standard 90.1-2007, and;
- c. Develop and implement a plan, including active training and enforcement provisions, to achieve 90% compliance with the target codes by 2017, including measuring current compliance each year.

2- **Achieving 90% Compliance in 8 Years Requires Prompt State Code**

Adoption. While ARRA, out of respect for the variations in state and local adoption procedures, includes no specific date by which states must adopt compliant building energy codes, the legislation does specify that State plans for demonstrating 90% compliance with the codes should be designed to achieve that compliance level within 8 years from passage of ARRA, *i.e.*, 2017. In order to ensure compliance with the law, it is in a State's best interest to begin the process of adopting target codes (or better) as soon as possible. The measurement of compliance "each year" means states will need to begin assessing their rate of compliance with the target codes in February 2010.

3- **Code Adoption Integral to Compliance.** While there is not yet a published common means of measuring and reporting compliance with the target codes, we recommend assessing compliance with the existing codes. DOE is currently developing these common means. It is clear that unless a compliant building energy code addressing both residential and commercial buildings is adopted in the state, it will be extremely difficult to provide compliance statistics that are based on the target codes.

4- **A Long Way to Go.** As of this writing, only a few states have adopted codes that "meet or exceed" the target codes.

5- **Training & Enforcement Essential to State Compliance.** To achieve the required levels of compliance, training and enforcement must match the adopted state code or codes, so the process of adopting these codes in tandem with the development of such training and enforcement provisions is critical.

6- **Funding Available for Enforcement and Training.** Funding for enforcement and training can come from fees imposed for inspections, from grants (including SEP and the Energy Efficiency and Conservation Block Grant (EECBG)), from existing state and federal energy efficiency funds and from new funding supported by the groups who are working together to increase building code-related funding in the pending climate and energy bills.

7- **The First ARRA Compliance Deadline is Approaching.** The Department of Energy will begin requesting that states report their rate of compliance with the

¹ U.S. DOE has determined that the 2009 International Residential Code (IRC) does not meet the energy provisions of the 2009 International Energy Conservation Code (IECC).

target energy codes in the near future, and we expect DOE to require regular reporting in conjunction with ARRA compliance.

- 8- **Funding Opportunities For Jurisdictions** Congress is considering tying future funding for states to progress towards satisfaction of the assurances made in accepting ARRA funds.

The undersigned groups are committed to providing support to any requesting state and local government to achieve adoption of the target codes, to develop workable plans for training and enforcement, and to assist them in developing a plan to address the measurement and reporting of annual compliance with the target codes.

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