

**Analysis of H.R. 6, “The Energy
Independence and Security Act of 2007”
Enacted on December 19, 2007**

**By IREM Legislative Staff
January, 2008**



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INTRODUCTION

The Energy Independence and Security Act of 2007 (H.R. 6) was signed into law by the President on December 19, 2007. This analysis focuses on sections of the law that will impact real estate owners, real estate managers, and commercial brokers. Provisions in the law need further clarification in agency rules. IREM Legislative Staff will be monitoring and sharing agency drafts with members for comment. Additionally, it is important to note that the various provisions of the law include varying deadlines. In the sections highlighted below, relevant dates are included.

COMMERCIAL BUILDINGS

The “Commercial High-Performance Buildings” provision of the law is of the most interest to commercial real estate professionals. Specifically, a Director of Commercial High-Performance Green Buildings is to be appointed who will report to the Assistant Secretary for Energy Efficiency and Renewable Energy. This position will be responsible for the establishment of a ‘zero-net-energy’ commercial building initiative. The details of this provision are provided below:

SEC. 422. ZERO NET ENERGY COMMERCIAL BUILDINGS INITIATIVE.

(1) The Commercial Director shall establish an initiative, to be known as the ‘Zero-Net-Energy Commercial Buildings Initiative’—

- (A) to reduce the quantity of energy consumed by commercial buildings located in the United States; and*
- (B) to achieve the development of zero net energy commercial buildings in the United States.*

(2) Consortium

- (A) Not later than 180 days after the date of enactment of this Act, the Commercial Director shall competitively select, and enter into an agreement with, a consortium to develop and carry out the initiative.*
- (B) In entering into an agreement with a consortium under subparagraph (A), the Commercial Director shall use the authority described in section 646(g) of the Department of Energy Organization Act (42 U.S.C 7256(g)), to the maximum extent practicable.*
- (C) Goal of Initiative- The goal of the initiative shall be to develop and disseminate technologies, practices, and policies for the development and establishment of zero net energy commercial buildings for—*
 - (1) any commercial building newly constructed in the United States by 2030;*
 - (2) 50 percent of the commercial building stock of the United States by 2040;*
 - (3) all commercial buildings in the United States by 2050.*

‘Zero-net-energy’ refers to a high-performance commercial building that is designed, constructed and operated to meet the following criteria:

- require a greatly reduced quantity of energy to operate
- meet the balance of energy needs from sources of energy that do not produce emissions of greenhouse gases; and

- be economically viable.

It is important to note that the timeline for all commercial buildings to achieve zero net energy by 2050 is a goal, not a mandate. However, these goals may have the potential for becoming the legal and market norm. Thus, this is of major concern to the commercial real estate industry because of the potential for excessive costs associated with building and retrofitting new and existing buildings to make them more energy efficient. Although it would be beneficial for commercial building owners and managers to be provided with tax incentives to offset these potentially devastating costs, this piece of legislation does not contain any tax incentives for these individuals.

No specific written rules have been established for guidance to achieve zero-net-energy, except for the establishment of a Commercial Director, who must formally recognize groups that qualify as a high-performance green building partnership consortium by March 19, 2008. These appointed groups may consist of a variety of different sectors such as academic/research organizations, financial institutions, real estate industries and more. Furthermore, in consultation with the Commercial Director, the public-private Consortium shall submit to Congress a report that describes the status of the high-performance green building initiatives no later than December 19, 2009, and biennially thereafter.

IREM will be closely monitoring the proposed rules of relevant agencies that will implement the law.

IREM Statement of Policy on Energy

IREM supports the concept of conservation policies and the use of energy efficient technology in building design and construction. However, we oppose mandatory national standards for building energy conservation. Specifically, IREM opposes mandatory installation, purchase, or usage guidelines for energy conserving products. Instead, IREM encourages positive incentives for conservation activities such as energy tax credits and an increased emphasis on energy efficient technology by the nation's building industry.

Increased conservation and domestic expansion are essential to our nation's security and economic prosperity. The nation should strive for greater energy self-sufficiency through further development of existing sources, decontrol of energy prices and the development of all new sources of domestic energy to reduce our dependence on foreign energy supplies.

We also believe the federal government should work to identify reliable sources of domestic and renewable energy, and promote development of these energy sources by reducing regulatory burdens and price restrictions. Furthermore, in the absence of competitive market forces, the federal government may need to step-in to protect consumers. In relation, the Institute believes in the initiative to expand and explore new and various sources of domestic energy supplies to provide relief to consumers by helping to create an economical balance of demand/supply.

In this growing economy, it is vital that consumers (both individual and business) have access to reliable, reasonably priced energy. IREM encourages its members to conserve energy and reduce

demand in their facilities. We encourage voluntary participation in programs such as EPA’s Building Program, Green Lights Program, and Energy Star Program.

HIGH-PERFORMANCE FEDERAL BUILDINGS

Privately-owned buildings leasing space to the federal government are subject to the law.

Real estate owners and managers of space leased by the federal government will be affected by the High-Performance Federal Buildings section—Title IV, Subtitle C—of the new energy law. This section of IREM’s paper summarizes the new goals for energy reduction in federal buildings then explains that rules will be promulgated setting new energy efficiency standards in federal buildings. As of January, 2008, none of the provisions had been implemented yet. Rules will be proposed in the coming months.

Energy Reduction Goals For Federal Buildings

The new energy law (Section 431) amended the National Energy Conservation Policy Act. Previously, the energy reduction goals for federal buildings stated that each agency must apply energy conservation measures to, and must improve the design for the construction of, the federal buildings of the agency so that the energy consumption per gross square foot of the federal buildings of the agency was reduced ultimately by 20% in fiscal year (FY) 2015. The new energy law has increased the amount of energy consumption in those buildings so that now it must be reduced by 30% by 2015. The new energy reduction goals for each fiscal year are included in the following chart.

Fiscal Year Percentage Reduction:

| | |
|-------------|-----|
| 2006 | 2% |
| 2007 | 4% |
| 2008 | 9% |
| 2009 | 12% |
| 2010 | 15% |
| 2011 | 18% |
| 2012 | 21% |
| 2013 | 24% |
| 2014 | 27% |
| 2015 | 30% |

Federal Building Energy Efficiency Performance Standards

By December 21, 2008, the Secretary of Energy must establish by rule revised federal building energy efficiency performance standards (Section 433). Public federal buildings that are new or undergoing major renovations and other federal buildings that have costs of \$2.5 million adjusted annually for inflation must meet the following:

- The buildings must be designed so that the fossil fuel-generated energy consumption of the buildings is reduced by the percentage specified in the following table:

| | |
|---------------|-------------|
| FY2010 | 55% |
| FY2015 | 65% |
| FY2020 | 80% |
| FY2025 | 90% |
| FY2030 | 100% |

- The Secretary of Energy may adjust the required energy reduction in the chart above after being petitioned by an agency subject to the law. The Secretary may decrease it in respect to a specific building if he or she agrees with the head of the agency who certifies that meeting such requirement would be technically impracticable.
- Sustainable design principles must be applied to the location, design, and construction of such buildings. By March 20, 2008, the Secretary must identify a certification system and level for green buildings that the Secretary determines to be the most likely to encourage a comprehensive and environmentally-sound approach to certification of green buildings.
- The Secretary must take into account the scope, degree, and types of renovations that are likely to provide significant opportunities for substantial improvements in energy efficiency.
- In identifying the green building certification system and level, the Secretary must consider certain criteria, including the following: the ability of the applicable certification organization to collect and reflect public comment; the ability of the standard to be developed and revised through a consensus-based process; an evaluation of the robustness of the criteria for a high-performance green building; and a national recognition within the building industry.
- In regards to privatized military housing, the Secretary of Defense, after consultation with the Secretary of Energy may, through rulemaking, develop alternative criteria to the criteria summarized above provided that it achieves an equivalent result in terms of energy savings, sustainable design, and green building performance.

Leasing

Beginning December 21, 2010, no federal agency may enter into a contract to lease space in a building that has not earned the Energy Star label in the most recent year (Section 435).

Buildings achieving a rating of 75 or higher and professionally verified to meet current indoor environment standards are eligible to apply for the Energy Star label. The Energy Star is awarded for a specific year. Details on how to apply for the Energy Star label are available at www.energystar.gov.

An exception applies if one of the following requirements is met:

- 1) No space is available in a building with the Energy Star label;
- 2) The agency proposes to remain in a building that the agency has occupied previously;
- 3) The agency proposes to lease a building of historical, architectural, or cultural significance or space in such a building; or
- 4) The lease is not for more than 10,000 gross square feet of space.

If the exception requirements are satisfied, an agency may enter into a contract to lease space in a building that has not earned the Energy Star label if the lease contract includes provisions requiring that, prior to occupancy or not later than one year after signing the contract, the space will be renovated for all energy efficiency and conservation improvements that would be cost effective over the life of the lease, including improvements in lighting, windows, and heating, ventilation, and air conditioning systems.

High-Performance Green Federal Buildings

By February 19, 2008, an Office of Federal High-Performance Green Buildings will be created within the General Services Administration. A Director will be appointed who will identify incentives to encourage the expedited use of high-performance green buildings and related technology in the operation of the federal government through recognition awards and the maximum feasible retention of financial savings for use in reinvesting in future high-performance green building initiatives.

The Director must identify a certification system to encourage a comprehensive and environmentally-sound approach to certifying green buildings.

The performance of federal green buildings will be audited by the Comptroller General.

APPLIANCES AND LIGHTING

Title III: Energy Savings Through Improved Standards For Appliance and Lighting focuses on manufacturers, not building owners or managers. Manufacturers of appliances are directly affected by Appliance Energy Efficiency (Subtitle A) and manufacturers of lighting, such as light bulbs and lamps, are directly affected by Lighting Energy Efficiency (Subtitle B).

The law does not state when building owners and managers must have the updated appliances and lighting in place. Rules may be promulgated regarding the products that could affect real estate owners and managers.

IREM legislative staff will carefully review proposed rules and comment on any rules of impact to real estate owners and managers.

IREM has an existing Statement of Policy on the Energy Star Program.

PUBLIC AND ASSISTED HOUSING

The new energy law (Section 481) amended the Cranston-Gonzalez National Affordable Housing Act's Energy Efficiency Standards section. The Secretary of HUD and the Secretary of Agriculture are to update the National Affordable Housing Act's International Energy Conservation Code with the revisions to the 2006 IECC or the ASHRAE Standard 90.1-2004.

If the Secretaries do not do so in a designated period of time then all new construction and rehabilitation¹ of housing must meet the requirements of the revised code or standard if the Secretaries make a determination that the revised codes do not negatively affect the availability or affordability of new construction of assisted housing and single family and multifamily residential housing subject to mortgages insured under the National Housing Act or insured, guaranteed, or made by the Secretary of Agriculture under Title V of the Housing Act. Further, the Secretary of Energy must make a determination that the revised code or standard would improve energy efficiency.

¹ The new energy law does not include a definition of rehabilitation. The Cranston-Gonzalez National Affordable Housing Act does not include a definition of rehabilitation. IREM legislative staff will be reviewing proposed rules to find if they include a definition.

POOL AND SPA SAFETY

Included in the new energy law is a section—Title XIV: Pool and Spa Safety—creating a new federal standard for swimming pool and drain covers. While the rest of the bill focuses on energy efficiency, this particular section is to be treated as a consumer product safety rule.

Apartment and condominium owners are affected by this section. A “public pool and spa” means a swimming pool or spa, including those that are open exclusively to members of an organization and their guests; residents of a multi-unit apartment building, apartment complex, residential real estate development, or other multi-family residential area; or patrons of a hotel or other public accommodations facility. Pools and spas that are open to the public generally, whether for a fee or free of charge.

The new energy law creates the Federal Swimming Pool and Spa Drain Cover Standard. Beginning December 19, 2008, each public pool and spa must be equipped with anti-entrapment devices or systems that comply with the ASME/ANSI A112.19.8 performance standard, or any successor standard; and each public pool and spa with a single main drain other than an unblockable drain must be equipped, at a minimum, with one or more of the following devices or systems designed to prevent entrapment by pool or spa drains: safety vacuum release system, suction-limiting system, gravity draining system, automatic pump shut-off system, drain disablement, or other systems determined by the Consumer Product Safety Commission.

If anyone violates the new Federal Swimming Pool and Spa Drain Cover Standard included in the energy law (Section 1404), then that will be considered a violation of the Consumer Product Safety Act² and thus subject to a civil penalty not to exceed \$5,000 for each such violation. A violation constitutes a separate offense with respect to each consumer product involved, except that the maximum civil penalty must not exceed \$1,250,000 for any related series of violations.

If the person who violated the Federal Swimming Pool and Spa Drain Cover Standard is not the manufacturer or private labeler or a distributor of the products involved, *and* if such person did not have either (i) actual knowledge that his distribution or sale of the product violated the law or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs, *then* that person will not be subject to penalty.

² 15 United States Code 2068, Section 19