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SENATE

{ REPORT
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FEDERAL AGENCY ENERGY EFFICIENCY
IMPROVEMENT ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1830

TO ESTABLISH THE CHIEF CONSERVATION OFFICERS COUNCIL TO
IMPROVE THE ENERGY EFFICIENCY OF FEDERAL AGENCIES,
AND FOR OTHER PURPOSES



APRIL 12, 2010.—Ordered to be printed

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APRIL 12, 2010.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1830]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1830) to establish the Chief Conservation Officers Council to improve the energy efficiency of Federal agencies, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 1830, the Federal Agency Energy Efficiency Improvement Act of 2009, seeks to make the federal government more energy efficient in its operations and to ensure accountability within executive branch agencies for meeting energy efficiency goals. The bill would require the head of each major federal agency to designate a Chief Conservation Officer and charge that officer with helping

ensure agency compliance with government energy policies, as well as a number of other tasks aimed at making the agency more energy efficient. The Chief Conservation Officer would serve in the Senior Executive Service and would participate in the Chief Conservation Officers Council, a new interagency body created by the legislation. The legislation also includes two provisions that change government procurement policies in order to encourage the purchase of energy-efficient technologies.

II. BACKGROUND AND NEED FOR THE LEGISLATION

As the largest consumer of energy in the world, the U.S. government has both the incentive and the opportunity to implement broad energy efficiency policies and make great use of energy-saving technologies. According to the U.S. Department of Energy's Federal Energy Management Program (FEMP), the federal government consumed about 1.5 percent of the nation's total energy in Fiscal Year 2008, at a cost of approximately \$24.5 billion.¹ Nearly one-third of that cost went just for the energy needed to operate Federal buildings.² Reducing the Federal government's energy usage thus would not only prove environmentally sound, but also would yield great cost savings.

Over the last few decades, more than a dozen laws, regulations, and Executive Orders have sought to encourage energy efficiency and reduce the environmental impact of government operations. Unfortunately, agencies have been inconsistent in meeting their environmental goals. The lack of a unified effort and clear accountability has undermined the good intentions of these policies.

Several Executive Orders, including one President Obama recently issued in October 2009, set energy reduction targets for agencies. In 2007, President Bush issued Executive Order 13423, requiring agencies to reduce their energy use.³ Specifically, the Executive Order required agencies to lower their energy consumption by 3 percent each year, with the goal of a 30 percent reduction from 2003 levels by the end of fiscal year 2015. Congress enacted this requirement into law in the Energy Independence and Security Act of 2007 (EISA).⁴

FEMP reported inconsistent progress by 2008, however. In fiscal year 2007, for example, the Environmental Protection Agency and the Department of the Interior were on-target to meet their reduction goals, but other agencies, including the Department of Transportation and the General Services Administration, were not.⁵ "Energy Management Scorecards" compiled annually by the Office of Management and Budget (OMB) reached similar conclusions, showing great variance across the Federal government, both in terms of

¹Information on federal energy usage may be found on the FEMP web site at <http://www1.eere.energy.gov/femp/>. See also *Cutting the Federal Government's Energy Bill: An Examination of the Sustainable Federal Government Executive Order Before the Subcommittee on Federal Financial Management, Government Information, Federal Services and International Security of the Senate Committee on Homeland Security and Governmental Affairs*, 111th Cong. (2010) (statement of Richard Kidd, Program Manager, Federal Energy Management Program, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy).

²*Id.*

³Exec. Order No. 13423, 72 FR 3919 (2007).

⁴Pub. L. 110-140, Sec. 431.

⁵U.S. Department of Energy. *2008 Federal Energy Management Program (FEMP) Market Report*. Washington: GPO, 2009.

compliance with energy efficiency laws and regulations and initiatives individual agencies have developed to reduce energy usage.⁶

On October 5, 2009, President Obama issued Executive Order 13514, which seeks to establish a more integrated strategy for energy efficiency.⁷ The Executive Order directs each agency head to designate an “Agency Senior Sustainability Officer” from among the agency’s senior management officials. This provision builds on the 2007 Executive Order 13423, which required agencies to designate senior officers responsible for environmental, energy, and transportation management; the functions of these officers will now be performed by Agency Senior Sustainability Officers.⁸

The Committee believes that these positions could be strengthened and that establishing the duties of agency conservation officers in statute will foster long-term leadership on energy efficiency issues and create greater accountability for meeting energy reduction targets. S. 1830 therefore would require the head of each major federal agency to designate a Chief Conservation Officer, who would be a member of the career Senior Executive Service. The bill would require that energy efficiency and sustainability policies would be the primary responsibility of these officers. Dedicating a senior-level career official to energy efficiency policy at each agency would improve the government’s focus on implementation of existing laws and policies, enhance innovation, and help identify future initiatives. The Chief Conservation Officer would also be responsible for incorporating environmental considerations into agency procurement practices. This involvement would encourage efficiency improvements in agencies’ procurement of goods and services.

S. 1830, like Executive Order 13514, also creates an interagency council of senior environmental officials, which will include each Chief Conservation Officer. The legislation goes further than the Executive Order in spelling out the duties of the council, which will be called the Chief Conservation Officers Council. These duties will include assisting agencies in developing energy baselines and goals, providing guidance and recommendations to agencies, and preparing annual reports.

By requiring the head of each major federal agency to designate a Chief Conservation Officer, and by giving statutory backing to the interagency council, S. 1830 provides a mechanism to ensure accountability in meeting agency energy reduction targets and to spur long-term leadership on the issue.

The legislation also includes two provisions that change government procurement policies in order to encourage the purchase of energy-efficient technologies. Specifically, the bill would allow state and local governments to purchase “green” commodities and services from the Schedules program of the General Services Administration (GSA), including building materials, office supplies, facilities maintenance and management services, and environmental

⁶U.S. Office of Management and Budget. *July 2009 OMB Scorecard for Energy, Transportation and Environment*. Washington: OMB, 2009. http://www.fedcenter.gov/Documents/index.cfm?id=13191&page_prq_id=27544&page_id=3286 (accessed on February 25, 2010)

⁷Exec. Order No. 13514, 74 FR 52117 (2009).

⁸Exec. Order No. 13423, 72 FR 3919 (2007).

services.⁹ This procurement authority would help state and local governments reduce the administrative costs of negotiating their own contracts and will encourage greater use of green products.

The bill would also expand the definition of renewable energy in Federal purchase requirements to include renewable energies other than electric energies. Federal purchase requirements are those Federal laws and regulations that govern the purchase and use of energy-using products.¹⁰ While Federal agencies are required to procure energy-efficient products, the current definition of that term includes only electric-based energy products, precluding agencies from taking advantage of other green energies like geo-thermal energy.

The Committee has received letters of support for the legislation from the Professional Services Council, Coalition for Government Procurement, Environment Northeast (ENE), and the Environmental Defense Fund.

III. LEGISLATIVE HISTORY

On October 21, 2009, Senators Collins, Lieberman and Carper introduced S. 1830, which was referred to the Senate Committee on Homeland Security and Governmental Affairs. The Committee considered the bill on December 16, 2009. The Committee adopted by voice vote a substitute amendment offered by Senator Collins, and then ordered the bill favorably reported, also by voice vote. Members present for the vote on the bill were Senators Lieberman, Akaka, Carper, Pryor, McCaskill, Tester, Burriss, Kirk, Collins, and Bennett.

The substitute amendment makes three primary changes to the original bill. First, the amendment adds a provision to the bill requiring the Chief Conservation Officer to consider the short- and long-term cost-effectiveness of each initiative before taking actions to increase energy efficiency. Second, the amendment clarifies information to be contained in annual reports the Chief Conservation Officers Council would submit to Congress and the Office of Management and Budget. Specifically, it directs the reports to include information about agency-by-agency energy usage and reductions, agency and government-wide trends in energy usage, agency and government-wide cost savings, and best practices and recommendations. Finally, the amendment deletes a provision of the original bill, which would have allowed agencies to enter into power purchase agreements for electricity produced by renewable energy sources under a pilot program.¹¹ According to the Congressional

⁹ Under the GSA Federal Supply Schedules (FSS) program, also known as the GSA Schedules or Multiple Award Schedules program, federal agencies are able to purchase goods and services under contracts that are pre-negotiated by GSA. These contracts cover more than 11 million commercial goods and services and are listed in broad categories known as schedules. GSA pre-negotiates the terms and conditions of the contract, including discounted prices.

¹⁰ Federal purchase requirements that govern the procurement of energy-efficient products include the Federal Procurement of Energy Efficiency Products, Final Rule, 74 Fed. Reg. 10830 (March 13, 2009) (to be codified at 10 CFR pt. 436). Print.; Energy Independence and Security Act of 2007, Pub. L. no. 110-140, 121 Stat. 1492 (2007). Print.; Energy Policy Act of 2005, Pub. L. no. 109-58, 119 Stat. 594 (2005). Print.; Exec. Order No. 13423, 72 FR 3919 (2007); Exec. Order No. 13221, 66 FR 40571 (2001); and Energy Policy Act of 1992, Pub. L. no. 102-486, 106 Stat. 2776 (1992). Print.

¹¹ Under a power purchase agreement, a developer installs, owns, operates, and maintains a renewable energy system on agency property while the agency agrees to purchase the power generated by the system. The agency simply purchases the power generated by the system at a set price over the length of the contract. This price is typically less than what would have been paid to the utility without a power purchase agreement. *See also Cutting the Federal Gov-*

Budget Office, this pilot program would have had significant budget implications.

IV. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1. Short title

The short title of the bill is the “Federal Agency Energy Efficiency Improvement Act of 2009.”

Section 2. Definitions

Section 2 defines the terms Chief Conservation Officer, Council, and federal agency. The term “federal agency” means an agency of the federal government, as defined by the Chief Financial Officers Act.¹²

Section 3. Chief Conservation Officers

This section requires each agency head to designate a Chief Conservation Officer and outlines the roles and responsibilities of the position. The designated individual must serve in the Senior Executive Service. While the duties outlined in the legislation must be the individual’s primary role, the individual may serve in other capacities in the federal government and may serve as the Senior Sustainability Officer created in Executive Order 13514.

The general responsibilities of the Chief Conservation Officer are to ensure the agency complies with each federal energy efficiency policy and to provide advice and other assistance to the agency head, as well as other applicable senior executive management personnel within the agency, to enhance the conservation efforts at the agency. The Chief Conservation Officer would be responsible for ensuring compliance by assessing agency performance, promoting best practices, providing advice and recommendations to senior agency officials, and exercising the other specific responsibilities described in this section. The bill does not give the Chief Conservation Officer statutory authority to overrule decisions of more senior agency officials. The bill also does not statutorily mandate energy efficiency policies promulgated by the Executive Branch or which otherwise have not been enacted into law.

Additionally, the Chief Conservation Officer is responsible for collecting data about the energy consumption of buildings and major equipment owned or operated by the agency, and providing that information to the Chief Conservation Officers Council. The Chief Conservation Officer is responsible for developing and implementing policies that minimize the agency’s energy consumption and taking any additional actions to increase energy efficiency and maintain or increase the agency’s energy security and cost savings. The Chief Conservation Officer is required to coordinate with the agency’s Chief Information Officer in developing, facilitating, and maintaining the implementation of a sound energy efficiency information technology architecture, and in ensuring energy consump-

ernment’s Energy Bill: An Examination of the Sustainable Federal Government Executive Order Before the Subcomm. on Federal Financial Management, Government Information, Federal Services and International Security of the Senate Comm. on Homeland Security and Governmental Affairs, 111th Cong. (2010) (statement of Richard Kidd, Program Manager, Federal Energy Management Program, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy).

¹² 31 U.S. Code, Sec. 901(b) (2003).

tion is considered in the design and operation of all major information resources management processes of the agency. Before implementing any of these initiatives or policies, the Chief Conservation is also to consider the cost-effectiveness of doing so.

The Chief Conservation Officer shall be responsible for the management of the energy efficiency of his or her agency. In this capacity, the Chief Conservation Officer shall monitor and evaluate the effectiveness of each energy efficiency program of the agency and advise the head of the agency on whether to continue, modify or terminate such programs. In addition, the Chief Conservation Officer, in conjunction with the Chief Information Officer, shall prepare an energy usage report that will be included in the agency's budget submissions to Congress.

Section 4. Chief Conservation Officers Council

This section establishes a Chief Conservation Officers Council, which is to serve as the principal interagency forum for improving agencies' practices relating to the design, acquisition, development, modernization, use, operation, sharing, and performance of federal energy efficiency efforts. The Deputy Director for Management of the Office of Management and Budget will serve as chairperson of the Council and the Program Manager will serve as Vice Chairperson. Other members of the Council will be the Chief Conservation Officers, the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Chief Information Officer of each agency, the Federal Environmental Executive, and any other officer or employee of the federal government as designated by the Chairperson or Vice Chairperson. The Council is to oversee the collection and reporting of any necessary energy usage data by Chief Conservation Officers and assist in developing agency energy baselines and goals. Additionally, the Council is to provide guidance and develop recommendations for agency Chief Conservation Officers to help meet their agencies' energy efficiency goals.

This section also requires the Council to submit to Congress and the Office of Management and Budget an annual report that includes information about agency-by-agency energy usage and reductions, agency and government-wide trends in energy usage, agency and government-wide cost savings, and best practices and recommendations.

This section also requires the Director of the Office of Management and Budget to include in the annual report and scorecard, as required by EISA,¹³ a description of agencies' efforts under this legislation. This means that the annual report and scorecard must include information about agencies' equipment and building energy usage. Information about energy usage should include energy usage baselines, actual usage, and usage goals.

Section 5. Authorization for acquisitions

This section allows state and local governments to purchase goods and services using contracts under certain GSA Schedules. The Schedules identified in the legislation contain environmentally preferable "green" products and services. While the legislation does not specifically require that the GSA provide training to state and

¹³Pub. L. 110-140 Sec. 431

local governments on use of these Schedules, the Committee presumes that GSA will provide access to training, as appropriate. The legislation expressly states that non-federal users of these Schedules—meaning state and local governments—must comply with the ordering guidance GSA provides. This is necessary to ensure non-federal users conduct proper order-level competition to obtain the best value from GSA Schedule contractors.

Section 6. Clarification of renewable energy

This section amends the definition of “renewable energy” under the Energy Policy Act of 2005 to extend federal purchase requirements beyond electricity. Under the current definition, agencies cannot take advantage of certain “green” technologies like geo-thermal energy because they are not considered electric. This provision expands the definition to include other non-electric technologies, such as geo-thermal energy.

V. REGULATORY IMPACT AND EVALUATION

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The Congressional Budget Office states that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandate Reform Act and would not affect the budgets of state, local, or tribal governments. The enactment of this legislation will not have significant regulatory impact.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

FEBRUARY 2, 2010.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1830, the Federal Agency Energy Efficiency Improvement Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1830—Federal Agency Energy Efficiency Improvement Act of 2009

S. 1830 would require each federal agency to appoint a Chief Conservation Officer to implement energy-efficiency policies. The legislation also would establish the Chief Conservation Officers Council as an interagency forum to provide guidance and recommendations to agencies on energy efficiency. Finally, S. 1830 would allow state and local governments to purchase certain energy-efficient products and services through the federal supply schedules.

Most of the provisions of S. 1830 would codify and expand the current energy-efficiency practices at federal agencies. Executive Order 13514, which expands upon Executive Order 13423, requires

each federal agency to designate a Senior Sustainability Officer from among senior management officials to promote, monitor, and report on energy efficiency; it also established an interagency steering committee to promote energy efficiency.

Any purchases of energy-efficient supplies and services would be an exchange between state, local, and tribal governments and commercial suppliers. The General Services Administration (GSA) charges a 0.75 percent fee on all sales to recover its procurement and administrative costs. Based on information from GSA regarding the anticipated demand from state and local governments, CBO estimates that implementing the bill would increase offsetting collections by a few million dollars a year. Because GSA is authorized to spend such collections without further appropriation, the net budgetary impact of this provision would be negligible.

Based on information from GSA, the Department of Energy, and the Office of Management and Budget, CBO expects that implementing other provisions of S. 1830 would not significantly add to governmentwide costs.

S. 1830 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The bill would benefit state, local, and tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the following changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

TITLE 40—PUBLIC BUILDINGS, PROPERTY, AND WORKS

Subtitle I—Federal Property and Administrative Services

CHAPTER 5—PROPERTY MANAGEMENT

Subchapter I—Procurement and Warehousing

SEC. 502. SERVICES FOR OTHER ENTITIES.

* * * * *

(c) USE OF CERTAIN SUPPLY SCHEDULES.—

(1) **IN GENERAL.**—The Administrator may provide for the use by State or local governments of Federal supply schedules of the General Services Administration for the following:

(A) Automated data processing equipment (including firmware), software, supplies, support equipment, and services (as contained in Federal supply classification code group 70).

(B) Alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal supply classification code group 84 or any amended or subsequent version of that Federal supply classification group).

(C) *Environmentally preferable ‘green’ products and services (as contained in Federal supply classification code groups 03FAC, 51V, 56, 72IA, 73, and 899), including any amended or subsequent version of the Federal supply classification code groups).*

(2) VOLUNTARY USE.—In any case of the use by a State or local government of a Federal supply schedule pursuant to paragraph (1), participation by a firm that sells to the Federal Government through the supply schedule shall be voluntary with respect to a sale to the State or local government through such supply schedule.

(3) *DUTY OF NON-FEDERAL USERS REGARDING USE OF FEDERAL SUPPLY SCHEDULES.—During the Use of a Federal supply schedule, an authorized non-Federal user shall act in accordance with the ordering guidance provided by the Administrator of General Services.*

* * * * *

Energy Policy Act of 2005 (Public Law 109–58; 119 Stat. 594)

* * * * *

SEC. 203. FEDERAL PURCHASE REQUIREMENT.

* * * * *

(a) REQUIREMENT.—The President, acting through the Secretary, shall seek to ensure that, to the extent economically feasible and technically practicable, of the total amount of [electric] energy the Federal Government consumes during any fiscal year, the following amounts shall be renewable energy:

- (1) Not less than 3 percent in fiscal years 2007 through 2009.
- (2) Not less than 5 percent in fiscal years 2010 through 2012.
- (3) Not less than 7.5 percent in fiscal year 2013 and each fiscal year thereafter.

(b) DEFINITIONS.—In this section:

(1) BIOMASS.—The term “biomass” means any lignin waste material that is segregated from other waste materials and is determined to be nonhazardous by the Administrator of the Environmental Protection Agency and any solid, nonhazardous, cellulosic material that is derived from—

(A) any of the following forest-related resources: mill residues, precommercial thinnings, slash, and brush, or non-merchantable material;

(B) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste (gar-

bage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled;

(C) agriculture wastes, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues, and livestock waste nutrients; or

(D) a plant that is grown exclusively as a fuel [for the production of electricity].

(2) RENEWABLE ENERGY.—The term “renewable energy” means [electric] energy generated from solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

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