

Green Policy Roundup

Future Sustainability Grows from Today's Policy Makers

By Mike Ratliff

Sustainable development, energy use and healthy buildings are front and center, as Chicago considers whether to join the list of major cities requiring building owners to disclose energy consumption data for large commercial assets. Meanwhile, a revised version of the bipartisan Shaheen-Portman Energy Savings and Industrial Competitive Act (S. 761) is expected to see a vote this month.

While the Real Estate Roundtable has a neutral view of the energy efficiency bill put forth by Sens. Jeanne Shaheen (D-N.H.) and Rob Portman (R-Ohio), the organization hopes the legislation can be amended to include the Tenant Star language from the Better Buildings Act of 2013 (S. 1191). The proposed program is based on the Environmental Protection Agency's Energy Star initiative, and would help motivate end-users of space to disclose, benchmark and reduce their energy consumption.

"We are trying to tackle the issue of energy consumption in buildings from both the top down and the bottom up," said Duane Desiderio, vice president & counsel at The Real Estate Roundtable. "We have got the top down part covered under Energy Star, which has been a huge success from an economic perspective, an energy perspective and an environmental perspective. The missing piece of the puzzle is looking at energy from the bottom up, making sure that tenants—those that lease space, that use energy—can receive similar recognition for energy efficiency."

Desiderio added that his organization's members are attributing 50 percent or more of the energy used in a building to tenant activities. If a Tenant Star program grew to the size of Energy Star—which saved American businesses more than \$2.7 billion in utility bills in 2012 alone—it would yield another substantial reduction of U.S. energy use and greenhouse gas emissions.

Another effort related to improving the performance of existing buildings is IRS §179d, the Energy Efficient Commercial Buildings Deduction. The deduction, which is part of the Energy Policy Act of 2005, is set to expire at year-end. The expectations set for new commercial development in 2005 have yet to see fruition, and industry organizations are working to implement a modified version of the code that will help to promote emerging saving retrofits, since as much as 80 percent of today's commercial assets are

expected to be standing 50 years from now.

"Section 179d, as we have seen, has not led to the promise of encouraging retrofits of existing buildings in a large way," Desiderio said. "It has been used successfully to a certain degree, particularly for exchanging out lighting systems. It has not met the (anticipated) potential as a motivator for deep retrofits in buildings, getting to multiple building systems like lighting, HVAC and the envelope."

The Real Estate Roundtable has worked with the Natural Resources Defense Council and U.S. Green Building Council on a proposal that will be reintroduced this Congress with the aim of enabling existing buildings to take a deduction based on improvement from their previous consumption.

"There is a lot of demand to do this, and a growing understanding of how to make this happen," said Lane Burt, policy director at the U.S. Green Building Council. "If there were an

incentive that would help some of these projects to build out, I think we would see a lot of activity in a quick timeframe. That would have a beneficial impact on both job creation and the broader economy."

Good policy, however, does not always have an easy path to getting approval. This is especially the case when there is cost involved, noted Karen Penafiel, vice president of advocacy, codes & standards at BOMA International.

"Right now, in the context of the House and Senate looking



at comprehensive tax reform—and wanting to crack the big nut before looking at all the individual pieces—it is going to be hard for an amended 179d to gain any traction. Good policy doesn't always yield an easier path."

Unfortunately, sometimes the reciprocal is true, and well-meaning environmental policy can add another hurdle to owning and operating buildings. The EPA is currently working on new regulations for lead-based paint in all commercial and public buildings constructed before 1978. While the final ruling has been delayed until December 2016, the regulations are currently based on the research and rules regarding lead-based paint in residential assets.

"We think it would be an enormous mistake, and a regulatory overreach, to claim that research that was done 10 to 20 years ago on residential buildings is sufficient for evaluating the risk in commercial buildings," said Penafiel, who testified on the issues at an EPA public comment hearing in late June. "All our members want to have healthy buildings, as the last thing any of our owners wants is to

have their building held up as being a health hazard. But a knee-jerk reaction and regulation that doesn't necessarily meet the threat is not going to help anybody."

Another item that building owners and facilities managers should be aware of is ASHRAE Standard 188, a proposed piece of code aimed at preventing Legionnaires' disease. The infection's namesake is the 1976 Legionnaires conference at the Bellevue-Stratford Hotel in Philadelphia, where 221 people were infected and 34 were killed by the at-the-time-unnamed bacteria *Legionella pneumophila*, an organism that had been found to be breeding in the cooling tower of the hotel's air conditioning system.

The new standard addresses indoor-air quality and testing requirements. While it may take awhile to become policy, "the ultimate goal will likely be routine testing of the cooling tower water, water features in buildings and even periodic testing of water coming out of lavatories," said Dan Probst, chairman of energy and sustainability services at Jones Lang LaSalle Inc.

When it comes to building facilities and energy use, Probst recommends that owners get used to the idea of collecting and sharing utility data, as a future federal mandate is one possibility, given the implementation of programs in Washington, D.C., Austin, New York City, Seattle and Boston (listed chronologically, based on the date policy was enacted; Portland, Ore., Massachusetts and Chicago have pending legislation).

"Required energy performance disclosure is a trend that we are continuing to see expand," he said, noting that Chicago considered it for years before finally introducing the bill. Regardless of policy, Jones Lang LaSalle encourages clients to participate in the Energy Star program. "If they get a relatively low score, there are things you can do. It is important to prepare for this regulation, because if you run a poor-performing building, it is going to become a bit more visible."

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—Mike Ratliff reports on legislative and policy issues quarterly. Look for an update on city and state progress with energy use disclosure policies, as well as any amendments to S. 761, in the December issue.

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