

Comparison of Building Code Sections in S. 2012 and H.R. 8

House and Senate leaders are engaged in negotiations to reconcile competing versions of comprehensive energy legislation passed during the 114th Congress and craft a conference report that can be enacted into law. The Senate bill (S. 2012) includes provisions from S. 720, the Energy Savings and Industrial Competitiveness Act, which was introduced by Sens. Rob Portman (R-Ohio) and Jeanne Shaheen (D-N.H.). Sen. Shaheen is Chair of the Alliance Honorary Board and Sen. Portman serves as Honorary Vice-Chair. The House bill (H.R. 8) includes building energy code provisions, which were taken from H.R. 1273, the Energy Savings and Building Efficiency Act, which was introduced by Reps. Marsha Blackburn (R-Tenn.) and Kurt Schrader (D-Ore.). This fact sheet compares the building energy code provisions from the two bills with existing law.

S. 2012 - the Energy Policy Modernization Act <i>As Passed by the Senate on April 20, 2016</i>	H.R. 8 - the North American Energy Security and Infrastructure Act <i>As Passed by the House on May 25, 2016</i>	Existing Law
Sec. 1001	Sec. 3141	
<i>Section 303 of the Energy Conservation and Production Act (42 U.S.C. 6832) is amended to read as follows:</i>		
Includes definitions of relevant building energy codes. Amends the State Building Energy Efficient Codes—Section 304 of the Energy Conservation and Production Act.	Similar to S. 2012, but includes addition clarifications for technically feasible and simple payback.	
Model Building Energy Code—defined as a voluntary building energy code or standard developed and updated through a consensus process among interested persons, such as the IECC or ASHRAE Standard 90.1 or code used by other appropriate organizations.	Model Building Energy Code— No substantive change.	Adds this definition to the list of definitions included in existing law.
Not in S. 2012.	ASHRAE Standard 90.1—The term ‘ASHRAE Standard 90.1’ means the American Society of Heating, Refrigerating and Air Conditioning Engineers ANSI/ASHRAE/IESNA Standard 90/1 Energy Standard for Buildings Except Low-Rise Residential Buildings.	Adds this definition to the list of definitions included in existing law.

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Not in S. 2012	Cost Effective – Defined as having a simple payback of 10 years or less.	Adds this definition to the list of definitions included in existing law.
IECC – refers to the International Energy Conservation Code as published by the International Code Council (ICC).	Same as S. 2012.	Adds this definition to the list of definitions included in existing law.
Indian Tribe—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103).	Indian Tribe— Identical to S.2012.	Adds this definition to the list of definitions included in existing law by referencing a previous law.
Not in S. 2012.	Simple Payback—The term ‘simple payback’ means the time in years that is required for energy savings to exceed the incremental first cost of a new requirement or code.	Adds this definition to the list of definitions included in existing law.
Not in S. 2012.	Technically Feasible—The term ‘technically feasible’ means capable of being achieved, based on widely available appliances, equipment, technologies, materials, and construction practices.	Adds this definition to the list of definitions included in existing law.
<i>Section 304 of the Energy Conservation and Production Act (42 U.S.C. 6833) is amended to read as follows:</i>		
(a) Directs the secretary to “encourage and support the adoption of building energy codes” by States, Indian tribes, local governments that “meet or exceed the model building energy codes, or achieve equivalent or greater energy savings.” Support full compliance with the State and local codes. <i>(continued)</i>	(a) Directs only for the Secretary to provide “technical assistance” for the implementation of codes building energy codes that are “technically feasible and cost-effective.” Same as S. 2012. <i>(continued)</i>	The Secretary shall provide technical assistance to help States with implementation, and to improve and implement State residential and commercial building efficiency codes or to otherwise promote the design and construction of energy efficient buildings. <i>(continued)</i>

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<p>(b) States and Indian Tribe Certification of Building Energy Code Updates—</p> <p>Requires states or Indian tribes to review and update energy provisions in building codes within 2 years.</p> <p>State/Tribe Certification Requires:</p> <p>Demonstration - The certification shall include a demonstration of whether or not the energy savings for the code provisions that are in effect meet or exceed—</p> <ul style="list-style-type: none"> - the energy savings of the updated model building energy code; or - the targets established under section 307(b)(2). <p>No Model Building Energy Code Update - If a model building energy code is not updated by a target date established under section 307(b)(2)(D), each State/tribe must certify, within 2 years, whether or not they have reviewed and updated the energy provisions of the building code of the State or Indian tribe to meet or exceed the target of 307(b)(2).</p> <p>Validation by secretary</p> <p style="text-align: right;"><i>(continued)</i></p>	<p>(b) States and Indian Tribe Certification of Building Energy Code Updates—</p> <p>Requires states and Indian tribes to review and update energy provisions in building codes within 3 years.</p> <p>State/Tribe Certification Requires: Does not require a demonstration, only a statement.</p> <p>Demonstration --The certification shall include a statement of whether or not the energy savings for the code provisions that are in effect meet or exceed—</p> <ul style="list-style-type: none"> - the energy savings of the updated model building energy code; or - the targets established under section 307(b)(2). <p>No Model Building Energy Code Update - If a model building energy code is not updated by a target date established under section 307(b)(2)(D), each State/tribe must certify, within 3 years, whether or not they have reviewed and updated the energy provisions of the building code of the State or Indian tribe to meet or exceed the target of 307(b)(2).</p> <p>Validation by secretary</p> <p style="text-align: right;"><i>(continued)</i></p>	<p>Current law does not reference Indian Tribes</p> <p>Residential – Following the release of a new building energy code, the Secretary is required to make a determination within 12 months on whether the update would improve energy efficiency in residential buildings. If this occurs, each State must, within 2 years, certify that it has reviewed the provisions of its residential building code regarding energy efficiency. The state is not required to adopt the new energy code, but must make a determination as to whether it is appropriate for it to do so.</p> <p>Commercial – Following the release of a new building energy code, the Secretary is required to make a determination within 12 months on whether the updated code would improve energy efficiency in commercial buildings. If this occurs, each State must, within 2 years, certify that is has reviewed and updated the provisions of its commercial building code regarding energy efficiency in accordance with the standard that has been revised. Such certification shall include a demonstration that the provisions of a State’s commercial building code meet or exceed the revised standard. If the Secretary determines that the revised standard will not</p> <p style="text-align: right;"><i>(continued)</i></p>

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<p>Not later than 90 days after such certification DOE shall—</p> <ul style="list-style-type: none"> - determine whether the code provisions meet the criteria; and - if the determination is positive, validate the certification. - Not in S. 2012 <p>Limitation is not in S. 2012.</p>	<p>Not later than 90 days after such certification DOE shall—</p> <ul style="list-style-type: none"> - determine whether the code provisions meet the criteria; and - determine whether the certification submitted is complete, - if these requirements are satisfied, validate the certification. <p>Inserts limitation that this section does not require state or Indian tribes to adopt building codes.</p>	<p>improve energy efficiency in commercial buildings, State commercial building code provisions for energy efficiency shall meet or exceed the last revised standard for which an affirmative determination has been made by the Secretary.</p> <p>The Secretary shall permit extensions for the certification requirements of both residential and commercial buildings if a State can demonstrate that is has made a good faith effort to comply and has made significant progress in meeting the requirements.</p>
<p>(c) Improvements in Compliance with Building Energy Codes—Requires states and Indian tribes, within 3 years, to certify they have achieved full compliance or made significant progress toward achieving full compliance with applicable model building energy codes. If a State or Indian tribe certifies that progress has been made, it must repeat the certification until it has achieved full compliance. Independent inspections of buildings will ensure continued measurement of compliance. For states and Indian tribes to be in compliance, at least 90% of building space covered by the code in previous year must be covered by applicable code or achieve greater energy savings OR the estimated excess energy use of buildings that did not meet the</p> <p style="text-align: right;"><i>(continued)</i></p>	<p>(c) Improvements in Compliance with Building Energy Codes—Similar to S. 2012, but does not require independent inspections.</p> <p style="text-align: right;"><i>(continued)</i></p>	<p style="text-align: right;"><i>(continued)</i></p>

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<p>applicable code must be less than 5% when compared to a baseline of comparable buildings that did meet this code.</p> <p>Validation process is the same as above section.</p> <p>Limitation is not in S. 2012.</p>	<p>Reiterates changes to validation of certification: if the certification (which requires a statement, not a demonstration) is complete, then the Secretary must validate the certification.</p> <p>Places limitation by stating this section does not require state or Indian tribes to adopt building codes.</p>	
<p>(d) States or Indian Tribes that Do Not Achieve Compliance—Entities that do not meet the certification requirement by target deadline must:</p> <ul style="list-style-type: none"> - Submit a report to the Secretary of the status of compliance. - Submit a plan for meeting the requirement and certification. <p>Not in S. 2012.</p> <p>States or local governments that do not meet the certification requirement by the target deadline may be considered for federal support.</p> <p style="text-align: right;"><i>(continued)</i></p>	<p>(d) States or Indian Tribes that Do Not Achieve Compliance— Entities that do not meet the certification requirement by target deadline are not required to submit a plan for meeting the requirement and certification.</p> <p>This section also expresses state sovereignty, which states that entities are not required to adopt building codes.</p> <p>The consideration of Federal support is limited to local governments in H.R. 8.</p> <p style="text-align: right;"><i>(continued)</i></p>	

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DOE will also submit annual reports to Congress on the status of model building codes, state of code compliance and adoption, and improvements in energy savings over time. The report must also include an estimate of financial impacts.	Same as S. 2012.	
<p>(e) Technical Assistance to States and Indian Tribes— Allows DOE to provide technical assistance for implementation of residential and commercial energy codes, demonstrations to show energy savings, documentation of compliance, and to otherwise promote the design and construction of energy efficient buildings.</p> <p>Not included in S. 2012.</p> <p>Not included in S. 2012.</p> <p>Not included in S. 2012.</p>	<p>(e) Technical Assistance to States and Indian Tribes— DOE may only provide technical assistance to implement or document rate of compliance with residential or commercial building codes.</p> <p>Technical assistance – defines the activities that are included under the term ‘technical assistance’.</p> <p>Exclusion – ‘technical assistance’ shall not include actions that promote or discourage the adoption of a particular building energy code, code provision or energy savings target to a State or Indian tribe.</p> <p>Information Quality and Transparency – Provides that information provided by the Secretary, attendant to any technical assistance provided to a State or Indian tribe, is considered ‘influential information’ and must follow the guidelines of the Office of Management and</p> <p style="text-align: right;"><i>(continued)</i></p>	<p>The Secretary shall provide technical assistance to help States with implementation, and to improve and implement State residential and commercial building efficiency codes or to otherwise promote the design and construction of energy efficient buildings.</p>

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	Budget, published at 67 Federal Register 8452 (Feb. 22, 2002). ¹	
<p>(f) Availability of Incentive Funding—DOE will provide incentive funding to implement and improve residential and commercial building codes, to increase and verify compliance with codes, to train local building code officials, and promote building energy efficiency through codes.</p> <p>Additional Funding—funding will be provided for implementation of a plan to achieve and document full compliance with building codes.</p> <p>Not in S. 2012.</p> <p>Training—Funding up to \$750,000 is made available for training of State or tribal building code officials to implement and enforce building codes.</p> <p style="text-align: right;"><i>(continued)</i></p>	<p>(f) Federal Support—DOE shall support State and tribes to implement the reporting requirements, to implement building energy codes, but this section does not include language about the promotion of building energy efficiency through codes.</p> <p>Not in H.R. 8.</p> <p>Exclusion—No support will be given to support adoption and implementation of a model energy code if DOE determines that the code is not cost-effective.</p> <p>Training—Similar to S. 2012. DOE may offer support for training, but does not make funding available.</p> <p style="text-align: right;"><i>(continued)</i></p>	<p>The Secretary shall provide incentive funding to States to implement these requirements and to improve and implement State residential and commercial building energy efficiency codes, including increasing and verifying compliance with such codes.</p> <p>Additional funding shall be provided for implementation of a plan to achieve at least 90 percent compliance with residential and commercial building energy efficiency codes if a State is implementing a code that meet or exceeds the most recent residential or commercial code that received an affirmative determination or to help a local government to do so, if it is located within a State that does not have a statewide code.</p> <p>Training – the Secretary may use \$500,000 for each fiscal year to train State and local officials to implement residential and commercial building codes.</p>

¹“Influential”, when used in the phrase “influential scientific, financial, or statistical information”, means that the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions. Each agency is authorized to define “influential” in ways appropriate for it given the nature and multiplicity of issues for which the agency is responsible. <http://www.whitehouse.gov/sites/default/files/omb/fedreg/reproducible2.pdf>.

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<p>Local Governments—States may share grants to local governments that implement and enforce codes.</p>	<p>Local Governments— States may work with local governments under this section, but it is not explicitly stated that they may share grants.</p>	
<p>(g) Stretch Codes and Advanced Standards—</p> <p>Prescribes that DOE shall provide technical and financial support for the development of stretch codes and advance standards for residential and commercial buildings. Specifies these stretch codes can be used as an option for adoption as building energy codes</p> <p>Targets—These standards must achieve substantial energy savings targets at least 3 to 6 years in advance of target years.</p>	<p>(g) Voluntary Programs to Exceed Model Building Energy Code—</p> <p>DOE will provide technical assistance described in subsection (f) to develop voluntary incentive programs and non-binding guidelines for building designs that exceed model building energy codes.</p> <p>Targets—these voluntary programs must be designed to achieve substantial energy savings compared to model building codes and meet targets, if available, up to 3 to 6 years in advance.</p>	
<p>(h) Studies—</p> <p>Not included in S. 2012.</p> <p style="text-align: right;"><i>(continued)</i></p>	<p>(h) Studies—</p> <p>GAO Study—Requires GAO to study the impacts of updating national model building codes and must submit a report to Congress within 3 years. The study should include and analysis of the energy savings from updating the codes, the actual consumer cost savings, and accounting of expenditures of the Federal funds under each program authorized.</p> <p style="text-align: right;"><i>(continued)</i></p>	

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<p>Subsection (h) contains the same language included in H.R. 8 under 'feasibility study', but does not require the 10-year simple payback and instead requires the incorporation of measured lifetimes. The study is not identified as a 'feasibility study' in S. 2012.</p> <p>Not included in S. 2012.</p>	<p>Feasibility Study—DOE, in consultation with other experts and stakeholders, must study the feasibility, impact, and economics of:</p> <ul style="list-style-type: none"> - Code improvements that require building design, siting, and constructed so they can be adapted to net-zero buildings in the future; - Code procedures to incorporate 10-year payback in calculations - Legislative options for increasing energy savings from building codes <p>Energy data in multi-tenant buildings—DOE required to undertake study of best practices of aggregate energy consumption information to owners and building managers.</p>	
<p>(i) Effect on Other Laws—No section supersedes or modifies the application of Section 321-346 of Energy Policy and Conservation Act.</p>	<p>(i) Effect on Other Laws—Identical to S. 2012.</p>	
<p>Not in S. 2012.</p>	<p>(j) Funding Limitations—No federal funding will be used to support the actions of DOE, or the States to advocate, promote, or discourage the adoption of a building energy code, code provision, or energy saving target.</p>	
<p>(j) Authorization of Appropriations—This section authorizes \$200,000,000 to remain available until expended.</p>	<p>Not in H.R. 8.</p>	<p>Authorized \$25,000,000 for each of fiscal years 2006-2010 and such sums as are necessary for fiscal year 2011 and each fiscal year thereafter.</p>

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<i>Section 305 of the Energy Conservation and Production Act (42 U.S.C. 6834) is amended as follows:</i>		
Replaces “voluntary building energy codes” with “model building energy codes.”	Identical to S. 2012.	
<i>Section 307 of the Energy Conservation and Production Act (42 U.S.C. 6836) is amended to read as follows:</i>		
(a) DOE shall support the updating of model building energy codes.	(a) DOE shall provide technical support for the updating of model building energy codes.	DOE, after consulting with a collection of relevant stakeholders, shall support the upgrading of ‘voluntary’ building energy codes for new residential and commercial buildings.
<p>(b) Targets—DOE shall to provide support the updating of model building energy codes. DOE shall also support updating of codes to enabled achievements of established aggregate energy savings targets.</p> <p>DOE will work with State, Indian tribes, local governments, and other stakeholders for updating codes by establishing one of more aggregate energy savings targets. DOE may establish separate targets for both residential and commercial buildings.</p> <p style="text-align: right;"><i>(continued)</i></p>	<p>(b) Targets—DOE required to provide technical assistance for updating model building codes. DOE shall also provide technical assistance for updating codes.</p> <p>DOE will provide technical assistance to States, Indian tribes, local governments, and other stakeholders for updating codes by establishing one or more aggregate energy savings targets through rulemaking in accordance with Section 553 of Title 5, United States Code. Separate targets may be established for residential and commercial buildings.</p> <p style="text-align: right;"><i>(continued)</i></p>	<p>DOE support shall include:</p> <ul style="list-style-type: none"> - A compilation of data and other information regarding building energy efficiency standards and codes; - Assistance in improving the technical basis for such standards and codes; - Assistance in determining the cost-effectiveness and the technical feasibility of the energy efficiency measures included in such standards and codes; and - Assistance in identifying appropriate measures with regard to radon and other indoor air pollutants. <p style="text-align: right;"><i>(continued)</i></p>

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<p>Baselines for updating codes are 2009 IECC for residential and ASHRAE 90.1-2010 for commercial buildings.</p> <p>Specific, yearly targets shall be established and revised by DOE through collaboration with recognized codes and standards developers that maximize energy efficiency and life-cycle cost effectiveness. Targets must be higher than preceding targets, and promote the achievement through performance energy efficiency.</p> <p>Initial Target - must be established within 1 year. DOE may also set a later target year for any model building energy codes if determined that target cannot be met.</p> <p>When establishing targets, DOE must ensure compliance with the Small Business Regulatory Enforcement Fairness Act of 1996.</p>	<p>Identical to S. 2012.</p> <p>Similar to S. 2012 - specific yearly targets must be in accordance with Section 553 of title 5, United States Code. Targets are not required to be life-cycle cost effective or higher than preceding target. Instead, targets should consider the maximum level of energy efficiency that is technically feasible and cost-effective.</p> <p>Identical to S. 2012.</p> <p>When establishing targets, DOE must ensure compliance with the Small Business Regulatory Enforcement Fairness Act of 1996 for any indirect economic effect on small entities that is reasonable foreseeable and a result of such rule.</p>	<p>DOE shall periodically review the technical and economic basis of voluntary building energy codes and, based upon ongoing research activities:</p> <ul style="list-style-type: none"> - Recommend amendments to such codes including measures with regard to radon and other indoor pollutants; - Seek adoption of all technologically feasible and economically justified energy efficiency measures; and <p>Otherwise participate in any industry process for review and modification of such codes.</p>
<p>Appliance & Other Considerations—In establishing building code targets, DOE shall develop or adjust targets in recognition of potential energy and costs savings related to appliance standards, on-site renewable energy sources, improvements in HVAC equipment, <i>(continued)</i></p>	<p>Appliance & Other Considerations— In establishing energy savings targets, DOE shall develop or adjust targets in recognition of potential energy and costs savings related to appliance standards, on-site renewable energy sources, improvements in HVAC equipment, <i>(continued)</i></p>	

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<p>building management systems, or other appropriate technologies, practices or building systems.</p> <p>Economic Considerations—Economic feasibility and potential costs to consumers must be considered when developing and revising code targets, which should also include a return on investment analysis.</p> <p>Not included in S. 2012.</p>	<p>building management systems, or other appropriate technologies, practices or building systems.</p> <p>Economic Considerations—The economic feasibility of achieving the proposed targets and the potential costs and savings for consumers and building owners must be considered by conducting a return on investment analysis, using a simple payback methodology over a 3-, 5-, and 7- year period.</p> <p>The Secretary is prohibited from proposing or providing technical or financial assistance for any code, provision, energy target, or amendment that has a payback greater than 10 years.</p>	
<p>(c) Technical Assistance to Model Building Energy Code-Setting and Standard Development Organizations—</p> <p>As requested, DOE shall provide technical assistance to model building energy code setting and standard development organizations. Outlines what assistance DOE is able to provide.</p> <p>Not in S. 2012.</p> <p style="text-align: right;"><i>(continued)</i></p>	<p>(c) Technical Assistance to Model Building Energy Code-Setting and Standard Development Organizations—</p> <p>Same as S. 2012, but outlines the type of ‘technical assistance’ DOE can provide.</p> <p>Exclusion— Defines technical assistance as activities that do not advocate, promote, or discourage the adoption of a particular building</p> <p style="text-align: right;"><i>(continued)</i></p>	

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<p>Not included in S. 2012.</p> <p>Amendment Proposals—DOE may submit amendment proposals to building codes and standard development organizations with supporting evidence that will allows energy codes to meet the established targets.</p> <p>Not in S. 2012.</p>	<p>discourage the adoption of a particular building energy code, code provision, or energy savings target.</p> <p>Information Quality and Transparency – Information used to develop energy savings targets is considered influential information and must meet certain guidelines (See footnote 1).</p> <p>(d) Amendment Proposals— Nearly identical to S. 2012, but further specifies the process and factors that amendments must go through.</p> <p>Process and Factors—All amendment proposals submitted by DOE shall be published in the Federal Register and made available on the DOE website 90 days prior to submittal to a code development body and shall be subject to a 60-day public comment period. Information provided by DOE is considered “influential information” and must meet guidelines established by OMB (see footnote 1) DOE will also use climate zone weighted averages for equipment heating, cooling, ventilation systems, and water heating systems, using equipment that is actually installed.</p>	

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<p>Same as H.R. 8.</p>	<p>(e) Analysis Methodology – DOE will make publicly available the entire calculation methodology used by DOE to estimate energy savings of code or standard proposals and revisions.</p>	
<p>Not included in S. 2012.</p>	<p>(f) Methodology Development— DOE shall establish methodology to evaluate cost-effectiveness of energy code changes in multifamily buildings that incorporate various economic parameters.</p>	
<p>(d) Determination – If provisions of the IECC or ASHRAE Standard 90.1 regarding building energy use are revised, DOE must make a preliminary determination not later than 90 days after the date of the revision and a final determination not later than 15 months after the date of the revision. This will determine whether or not the revision improves energy efficiency in buildings compared to existing code and meets applicable targets.</p> <p>Codes or standards not meeting criteria – if the preliminary determination of the revision states that a code or standard does not meet the targets, DOE may at that time provide the model building energy code or standard developer with proposed changes. These proposals should consider whether the modified code is technically feasible and cost-effective, available technologies and</p> <p style="text-align: right;"><i>(continued)</i></p>	<p>(g) Same as S. 2012, but adds an additional caveat of whether or not the revision is technically feasible and cost-effective.</p> <p>Similar to S. 2012, but adds the requirement that any proposed changes made by DOE must be made available on the website 90 days before being submitted to the code or standard developer and must be subject to a 60-day public comment period. Also, information provided by DOE is ‘influential information’ and must conform with OMB guidelines.</p> <p style="text-align: right;"><i>(continued)</i></p>	

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<p>appliances, and other economic considerations.</p> <p>Incorporation of changes – On receipt of proposed changes, the model energy code or standard developer shall have an additional 270 days to accept or reject the proposed changes.</p> <p>Final Determination – a final determination shall be made on the modified model building energy code or standard.</p>	<p>Same as S. 2012.</p> <p>Same as S. 2012.</p>	
<p>(e) Administration— DOE required to publish notice of targets and supporting analysis and determinations to the Federal Register.</p> <p>Opportunity for public comment will also be established.</p>	<p>(h) Administration— DOE required to publish notice of targets, amendment proposals, and determinations to the Federal Register. Supporting documents include modeling, data, assumptions, protocols, and cost benefit analysis, including return on investment.</p> <p>Opportunity for public comment will also be established in accordance with section 553 of title 5, United States Code.</p>	
<p>(f) Voluntary Codes and Standards—Any other provision or model building code or standard will not be binding on State, local governments, or Indian tribes as matter of federal law.</p>	<p>(i) Voluntary Codes and Standards—Nearly identical to S. 2012.</p>	

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<p>Not in S. 2012.</p>	<p><u>Section 3142</u>: Voluntary Nature of Building Asset Rating program</p>	
	<p>DOE may enable the owner of commercial or residential building to obtain rating score or label for actual or anticipated energy use or performance. Emphasizes that any information made available by DOE is not intended to be the basis for regulatory program by the Federal, State, local, or municipal government body.</p>	