

111TH CONGRESS
1ST SESSION

S. 2897

To establish incentives to increase the energy efficiency of federally assisted housing.

IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2009

Mr. BENNET introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To establish incentives to increase the energy efficiency of federally assisted housing.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Energy Efficiency
5 Modernization Act of 2009”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 Congress finds that—

8 (1) Federally assisted housing programs provide
9 robust opportunities for energy efficiency improve-
10 ments and up-front investments in such improve-

1 ments would provide significant long-term cost sav-
2 ings for taxpayers, provide stimulus to the economy
3 through creation of capital projects and jobs, estab-
4 lish best practices for the industry and be consistent
5 with the mandate of the Department of Housing and
6 Urban Development (HUD);

7 (2) the Government Accountability Office re-
8 ported in an October 2008 study that HUD pays an
9 estimated \$5 billion annually for energy costs for ap-
10 proximately 6 million dwelling units of assisted hous-
11 ing, representing almost 17 percent of the Nation's
12 housing stock;

13 (3) according to the Harvard University Grad-
14 uate School of Design, more than 80 percent of fed-
15 erally assisted housing stock is between 15 years to
16 30 years old;

17 (4) existing rules and regulations do not ade-
18 quately incentivize owners of HUD-assisted property
19 to maximize efforts to make energy efficiency im-
20 provements to such properties; and

21 (5) increasing the energy efficiency of federally-
22 assisted housing by 25 percent to 40 percent would
23 create near-term savings for HUD of roughly \$1 bil-
24 lion to \$1.5 billion annually, resulting in substantial

1 long-term cost savings for the Federal Government
2 and for taxpayers.

3 **SEC. 3. GREEN DIVIDEND PROGRAM FOR FEDERALLY AS-**
4 **SISTED RENTAL HOUSING.**

5 (a) **AUTHORITY.**—The Secretary shall establish a
6 program under this section to provide green dividends to
7 owners of covered federally assisted housing projects who
8 undertake utility cost-saving measures that result in util-
9 ity cost savings for such housing.

10 (b) **GREEN DIVIDENDS.**—

11 (1) **IN GENERAL.**—A green dividend under this
12 section with respect to a covered federally assisted
13 housing project shall be an annual distribution, to
14 the owner of the project, of an amount of the sur-
15 plus project funds that is equal to the sum of—

16 (A) 50 percent of the annual utility cost
17 savings resulting from the utility cost-saving
18 measures conducted for the project; and

19 (B) any reasonable costs, as determined by
20 the Secretary pursuant to subsection (d)(4), in-
21 curred by the owner in carrying out the utility
22 cost-saving measures, including financing costs
23 incurred by the owner or a third party, in com-
24 pliance with guidelines established pursuant to
25 subsection (d)(3).

1 (2) ADDITIONAL TO STANDARD DISTRIBUTION.—Notwithstanding any other law or regulation
2 relating to a limitation on distributions for a covered
3 federally assisted housing project, a green dividend
4 under this section shall be in addition to the stand-
5 ard distribution that the owner of the project is au-
6 thorized to receive from the project pursuant to the
7 regulations of the Secretary.

9 (c) STANDARDS FOR MEASUREMENT AND MONI-
10 TORING.—In carrying out the program under this section,
11 the Secretary shall establish and utilize the following
12 standardized methods:

13 (1) Methods that an owner of a covered feder-
14 ally assisted housing project may use to accurately
15 measure the baseline utility use of the project before
16 undertaking the utility cost-saving measures for the
17 project.

18 (2) Methods that an owner of a covered feder-
19 ally assisted housing project may use to effectively
20 monitor reductions in the utility use of the project
21 resulting from the completed utility cost-saving
22 measures for the project.

23 (3) Methods that an owner of a covered feder-
24 ally assisted housing project may use to track, and
25 that the Secretary may use to verify, utility cost sav-

1 ings resulting from the utility cost-saving measures
2 for the project that account for the effect of changes
3 in utility costs and such other factors that the Sec-
4 retary considers necessary or appropriate.

5 (d) OTHER REQUIREMENTS.—

6 (1) APPLICATION AND SELECTION.—The Sec-
7 retary shall establish requirements for owners of
8 covered federally assisted housing projects to apply
9 for participation in the program under this section
10 and shall select among such applications based upon
11 selection criteria, which the Secretary shall establish.

12 (2) COST-EFFECTIVENESS.—The Secretary
13 shall establish guidelines to ensure that any utility
14 cost-saving measures undertaken pursuant to the
15 program under this section are cost-effective in rela-
16 tion to the utility cost savings resulting from the
17 measures and the green dividend provided under this
18 section to the owner.

19 (3) ENERGY PERFORMANCE CONTRACTS.—The
20 Secretary shall establish guidelines for the use of en-
21 ergy performance contracting in carrying out utility
22 cost-saving measures pursuant to the program under
23 this section.

24 (4) FINANCING COSTS.—The Secretary shall es-
25 tablish guidelines for the financing of the reasonable

1 costs incurred by an owner of a covered federally as-
2 sisted housing project in carrying out utility cost-
3 saving measures under the program under this sec-
4 tion, and whether such costs, whether financed by
5 the limited dividend owner or a third party, shall be
6 repayable from project funds.

7 (5) REPORTING.—

8 (A) TO SECRETARY.—The Secretary shall
9 require each owner of a covered federally as-
10 sisted housing project for which a green divi-
11 dend is provided pursuant to the program
12 under this section to submit to the Secretary
13 such reports regarding the project, the utility
14 cost-saving measures undertaken for the
15 project, and the utility cost savings of the
16 project in accordance with such requirements as
17 the Secretary shall establish.

18 (B) TO CONGRESS.—The Secretary shall
19 submit a reports to the Congress describing the
20 implementation and operation of the program
21 under this section, as follows:

22 (i) INITIAL REPORT.—The Secretary
23 shall submit a report describing the initial
24 implementation and operation of the pro-
25 gram not later than the expiration of the

1 180-day period beginning upon the date of
2 the enactment of this Act.

3 (ii) ANNUAL REPORTS.—Not later
4 than the expiration of the 12-month period
5 that begins upon the expiration of the pe-
6 riod specified clause (i), and upon the expi-
7 ration of each successive 12-month period
8 thereafter, the Secretary shall submit a re-
9 port describing the ongoing operation of
10 the program.

11 (e) PREEMPTION OF CONFLICTING STATE LAWS
12 LIMITING DISTRIBUTIONS.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), no State or political subdivision of a
15 State may establish, continue in effect, or enforce
16 any law, regulation, or administrative requirement
17 that limits or restricts, to an amount that is less
18 than the sum of the amounts provided for under
19 paragraphs (1) and (2) of subsection (b), the
20 amount of surplus project funds accruing after the
21 date of the enactment of this section that may be
22 distributed from any covered federally assisted hous-
23 ing project.

1 (2) EXCEPTION AND WAIVER.—Paragraph (1)
2 shall not apply to any law or regulation to the extent
3 such law or regulation applies to—

4 (A) a State-financed covered federally as-
5 sisted housing project; or

6 (B) a covered federally assisted housing
7 project for which the owner has elected to waive
8 the applicability of paragraph (1).

9 (f) DEFINITIONS.—For purposes of this section, the
10 following definitions shall apply:

11 (1) COVERED FEDERALLY ASSISTED HOUSING
12 PROJECT.—The term “covered federally assisted
13 housing project” means any multifamily rental hous-
14 ing project that—

15 (A) is provided any rental assistance,
16 mortgage insurance, subsidy, or other financial
17 assistance by the Secretary; and

18 (B) that is subject to a limitation on dis-
19 tributions, to the owner, of project funds under
20 section 200.106(a), 236.1(e), 880.205(b),
21 881.205(b), or 883.306(b) of title 24 of the
22 Code of Federal Regulations, or any other stat-
23 ute or regulation applicable to the project.

24 (2) SECRETARY.—The term “Secretary” means
25 the Secretary of Housing and Urban Development.

1 (3) SURPLUS PROJECT FUNDS.—The term
2 “surplus project funds” means, with respect to a
3 covered federally assisted housing project, the net
4 revenue of the project after all project expenses have
5 been paid, or funds have been set aside for the pay-
6 ment thereof, and any reserve requirements applica-
7 ble to the project have been met.

8 (4) UTILITY COST SAVINGS.—The term “utility
9 cost savings” means, with respect to utility cost-sav-
10 ing measures undertaken for a covered federally as-
11 sisted housing project, the difference between—

12 (A) the energy or water costs that would
13 have been incurred for the project if such utility
14 cost-saving measures were not completed; and

15 (B) the actual energy or water costs for
16 the project after completion of the utility cost-
17 saving measures.

18 (5) UTILITY COST-SAVING MEASURES.—The
19 term “utility cost-saving measures” means, with re-
20 spect to a covered federally assisted housing project,
21 any rehabilitation, renovation, retrofit, improvement,
22 or alteration for the project that incorporates any
23 technology, equipment, fixture, or material, or pro-
24 motes any practice, designed to reduce the energy or
25 water consumption of the project.

1 (g) REGULATIONS.—Not later than the expiration of
2 the 180-day period beginning on the date of the enactment
3 of this Act, the Secretary shall issue any regulations nec-
4 essary to carry out this section.

5 **SEC. 4. REVIEW OF THE USE OF RESIDUAL RECEIPTS AND**
6 **RESERVE FOR REPLACEMENTS FUNDS.**

7 The Secretary of Housing and Urban Development
8 shall—

9 (1) review its regulations and agreements con-
10 cerning residual receipts accounts in Federally as-
11 sisted rental housing subject to a limitation on dis-
12 tributions under section 200.106(a), 236.1(e),
13 880.205(b), 881.205, or 883.306(b) of title 24 of
14 the Code of Federal Regulations, or any other stat-
15 ute or regulation applicable to the project to clarify
16 if the use of such funds for other project purposes
17 includes activities related to the energy efficiency at
18 properties with such residual receipts accounts; and

19 (2) revise its policies with regards to the use of
20 reserve for replacement funds to encourage the use
21 of such reserves, where practical, for energy effi-
22 ciency items.

1 **SEC. 5. STUDY ON EXEMPTION FROM BUILDING CODES TO**
2 **ALLOW DISTRIBUTIVE ENERGY GENERATION**
3 **MEASURES AND WATER EFFICIENCY MEAS-**
4 **URES.**

5 (a) STUDY.—The Comptroller General of the United
6 States shall conduct a study to analyze and determine the
7 benefits of establishing a statutory exemption under Fed-
8 eral law from compliance with provisions of State and local
9 building codes that do not affect the health or safety of
10 residents of multifamily housing assisted by the Depart-
11 ment of Housing and Urban Development to enable and
12 encourage the construction and installation in such
13 projects of distributive energy generation measures and
14 water efficiency measures.

15 (b) PROVISION OF INFORMATION TO ENERGY INFOR-
16 MATION ADMINISTRATION.—The Comptroller General
17 shall provide any information collected in conducting the
18 study under this section to the Secretary of Energy to sup-
19 plement information collected and maintained by the En-
20 ergy Information Administration of the Department of
21 Energy regarding residential energy consumption.

22 (c) REPORT.—Not later than the expiration of the 6-
23 month period beginning on the date of the enactment of
24 this Act, the Comptroller General shall submit a report
25 to the Congress and to the Secretary of Energy setting

1 forth the results and conclusions of the study under this
2 section.

3 **SEC. 6. REPORTS ON UTILITY CONSUMPTION FOR HUD-AS-**
4 **SISTED MULTIFAMILY PROJECTS.**

5 (a) IN GENERAL.—To assist the Secretary of Hous-
6 ing and Urban Development in determining how and
7 where to undertake energy and other utility efficiency
8 measures, the Secretary shall, by regulation, require each
9 owner of an assisted multifamily housing project to report
10 regularly to the Secretary regarding consumption by the
11 project of electricity, water, gas, and other utilities.

12 (b) ANNUAL REPORT BY SECRETARY.—The Sec-
13 retary shall compile the information received pursuant to
14 subsection (a) and submit a report to the Congress and
15 the Energy Information Administration annually regard-
16 ing total utility consumption by assisted multifamily hous-
17 ing projects. The report shall include all non-aggregated
18 data submitted to the Secretary pursuant to subsection
19 (a).

20 (c) ASSISTED MULTIFAMILY HOUSING PROJECT.—
21 For purposes of this section, the term “assisted multi-
22 family housing project” means any multifamily housing
23 project that is—

24 (1) provided project-based assistance under sec-
25 tion 8 of the United States Housing Act of 1937, in-

1 including new construction and substantial rehabilita-
2 tion projects;

3 (2) assisted under section 202 of the Housing
4 Act of 1959 (as amended by section 801 of the
5 Cranston-Gonzalez National Affordable Housing
6 Act);

7 (3) assisted under section 202 of the Housing
8 Act of 1959, as such section existed before the en-
9 actment of the Cranston-Gonzalez National Afford-
10 able Housing Act;

11 (4) assisted under section 811 of the Cranston-
12 Gonzalez National Affordable Housing Act;

13 (5) financed by a loan or mortgage insured
14 under section 221(d)(3) of the National Housing Act
15 that bears interest at a rate determined under the
16 proviso of section 221(d)(5) of such Act; or

17 (6) insured, assisted, or held by the Secretary
18 or a State or State agency under section 236 of the
19 National Housing Act.

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