

DISCUSSION DRAFT
THREATS AND OPPORTUNITIES IN CLIMATE CHANGE LEGISLATION
FOR THE REAL ESTATE AND CONSTRUCTION INDUSTRIES

A “cap and trade” scheme (and unspecified EPA regulation for smaller emitters) to regulate GHG emissions could increase the cost of construction and make U.S. investments in manufacturing and industrial facilities less economically attractive. Potential increases in the cost of electricity and fuel used in manufacturing and industry would affect the cost of materials (cement, steel) and products (HVAC, plumbing supplies) used in construction; thereby reducing the demand for new construction and major upgrades and/or renovations. This effect would be seen particularly strong in geographic areas where renewable energy targets may not be met easily. The increases in cost also could force manufacturing and industrial facilities to relocate overseas or cease operations altogether, rather than make the investments needed to upgrade or expand their facilities.

Free-rein to EPA for unspecified regulation of smaller emitters would be burdensome and expensive for small businesses. While the currently pending bill (H.R. 2454) pre-empts the regulation of GHGs under many detrimental programs in the Clean Air Act (CAA), it empowers EPA to regulate small emitters—as low as 10,000 metric tons per year of CO₂ equivalent. In its proposed rulemaking on mandatory reporting of GHG emissions, EPA itself considered requirements for small emitters and determined that the cost and burden would be too great compared to the minor increase in the percentage of emissions reported. Furthermore, the bill gives the EPA power to create these standards under CAA Section 111 *“without regard to any determination of feasibility that would otherwise be required.”*

New standards for construction equipment would increase costs, uncertainty. The draft bill directs EPA to set new GHG emission standards for sources not controlled by the allowance system, pointing to a variety of mobile sources used in construction—including new heavy duty trucks and off-road equipment. In addition, it creates special programs to aggressively reduce emissions of black carbon—which is emitted by construction equipment—specifically directing EPA to make an inventory of sources, to outline strategies to “retrofit” on-road and off-road sources that are currently in use, and to use its existing authority under the CAA to promulgate final regulations on black carbon within two years.

New transportation planning requirements under EPA would lead to more federal decision-making authority over local land use planning. The currently pending bill (H.R. 2454) provides EPA with unprecedented authority over transportation planning by requiring states and municipalities to submit plans to EPA that meet goals for GHG reductions from the transportation sector. This could lead to restrictions on personal and freight mobility, create new substantive and procedural planning hurdles for highway projects, and increase the pain of congestion. Limiting transportation choices jeopardizes the ability of communities to attract and retain business or to provide the necessary infrastructure to connect people to their homes, jobs and interests. The construction of buildings and facilities along these networks would suffer.

Setting arbitrary energy efficiency targets through a government run process rather than relying on the existing consensus process to develop building energy codes would result in greater uncertainty for the building industry and likely result in unnecessary delays in the development of such codes. The existing processes for the development of building energy codes requires the participation of multiple stakeholders in an open, consensus based process including government, advocacy groups, and industry representatives. This process results in the development of codes that achieve the highest levels of efficiency possible that are cost effective and utilize proven technologies. Furthermore, significant gains in reducing energy use and related GHG emissions can be achieved through enforcement and adoption of existing building energy codes, which can be assisted through grants, training programs, and technical resources.

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Transitioning to a carbon-constrained economy may present new opportunities for building design and construction to meet growing needs for energy efficient infrastructure. Tax or other incentives in any GHG legislation to reduce energy consumption in the U.S. could provide opportunities for the real estate, design and construction industries to provide new and/or upgrade existing infrastructure to meet the needs of a carbon-constrained economy: renewable energy generating facilities (wind/solar), energy-efficient buildings; efficient electrical transmission and distribution networks (Smart Grid), and other facilities required to support this transition.

By pre-empting the Clean Air Act, the currently pending bill (H.R. 2454) unties the hands of construction firms and public and private entities trying to reduce GHG emissions. Using the CAA to regulate GHGs could halt building construction and renovation. Once EPA controls a GHG under almost any section of the Act, most buildings that emit that “pollutant” would become subject to costly permitting and construction requirements. The bill’s pre-emption language would allow construction and renovation to move forward and allow the industry to contribute towards a clean energy economy.

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