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Legislative Council

LC Paper No. LS24/09-10

Paper for the House Committee Meeting on 11 December 2009

Legal Service Division Report on Buildings Energy Efficiency Bill

I. SUMMARY

- 1. Objects of the Bill** To require compliance with codes of practice promulgated by the Electrical and Mechanical Services Department (EMSD) concerning the energy efficiency of air-conditioning installations, electrical installations, lift and escalator installations and lighting installations and energy audits in respect of certain types of buildings.
- 2. Comments** The Bill seeks to introduce a new policy to require developers and owners of certain types of buildings to comply with energy efficiency requirements, which have been operated by EMSD as a voluntary scheme from 1998. Criminal penalties are sought to be imposed on contravention of the various provisions of the Bill.
- 3. Public Consultation** The Advisory Council on the Environment, the Energy Efficiency and Conservation Sub-committee of the Energy Advisory Committee and the Business Facilitation Advisory Committee were consulted in June and July 2009 and they supported the proposal.
- 4. Consultation with LegCo Panel** The Panel on Environmental Affairs (EA Panel) was consulted on 15 July 2009. While supporting the need to promote energy efficiency and conservation in buildings, some members expressed the concern that the proposed mandatory implementation of BEC would become an additional burden on owners of pre-enactment buildings, particularly those smaller developments and those without Incorporated Owners, who would have much difficulty in funding the energy audits and maintenance of energy-efficient installations. The Administration was also asked to spell out clearly the qualifications of competent persons to carry out energy audits.
- 5. Conclusion** In light of the concerns raised by members of the EA Panel, members may wish to examine the policy perspective and operational aspects of the new scheme in detail.

II. REPORT

Objects of the Bill

To require compliance with codes of practice promulgated by the Electrical and Mechanical Services Department (EMSD) concerning the energy efficiency of air-conditioning installations, electrical installations, lift and escalator installations and lighting installations and energy audits in respect of certain types of buildings.

LegCo Brief Reference

2. ENB 24//26/22 dated 2 December 2009 issued by the Environment Bureau.

Date of First Reading

3. 9 December 2009.

Comments

4. The Building Energy Codes (BEC) set down minimum energy efficiency standards on key building services installations. Since 1998, EMSD has operated a voluntary Hong Kong Energy Efficiency Registration Scheme for Buildings (HKEERSB) to encourage compliance with BEC. According to the Administration, the participation rate of the private sector in the HKEERSB has been low and the Administration considers it necessary to pursue mandatory compliance with minimum building energy efficiency standards (para. 2 and 3 of LegCo Brief) through the introduction of the Bill.

Part 2 of the Bill

5. The following types of buildings (prescribed buildings) in respect of which a consent to the commencement of building works for superstructure construction is given after the commencement of this Part would be required to comply with the relevant energy efficiency requirements (clause 7 and Schedule 1 to the Bill) -

- (a) commercial building;
- (b) non-residential or non-industrial portion of a composite building;

- (c) hotel and guesthouse;
- (d) common area of a residential building;
- (e) common area of the residential or industrial portion of a composite building;
- (f) common area of an industrial building;
- (g) educational building;
- (h) community building;
- (i) municipal building;
- (j) medical and health care services building;
- (k) building which is owned by the Government and used predominantly for accommodation of people in the course of performance of any function of the Government;
- (l) passenger terminal building of an airport; and
- (m) railway station.

6. Under clauses 8 of the Bill, the developer of a proposed building must make a declaration at design stage that all building services installations to be provided by the developer in that building are designed, and will be installed and completed, in accordance with a code of practice issued by the Director of Electrical and Mechanical Services (the Director). The declaration must be certified by a registered energy assessor.

7. Under clause 9, the developer of a building must also, after an occupation approval is issued in respect of the building, make a declaration that all building services installations provided by the developer in that building at or before the time when the declaration is made have been designed, installed and completed in accordance with a code of practice. The declaration must be certified by a registered energy assessor.

8. The Director shall issue a Certificate of Compliance Registration to a developer who has submitted a declaration under clause 9. The Director must keep a register of buildings issued with a Certificate of Compliance Registration.

9. Clause 12 requires the owner of a building and the responsible person of a unit of a building to ensure that building services installations are maintained to a certain standard. The owner of a building must ensure that a Certificate of Compliance Registration is in force in respect of the building.

Part 3 of the Bill

10. Part 3 applies to all prescribed buildings and imposes a duty on the responsible person of a unit or the owner of the common area of a building to obtain a Form of Compliance after major retrofitting works have been carried out in respect of building services installations. A Form of Compliance must be issued by a registered energy assessor. The responsible person or owner concerned must maintain the relevant building services installations to a certain standard.

Part 4 of the Bill

11. Part 4 provides for energy audits for commercial buildings and commercial portions of composite buildings. Under this part, owners of such buildings are required to conduct energy audits in respect of the common areas of the buildings at intervals no longer than 10 years. Energy audits are to be carried out by registered energy assessors who must send a copy of an Energy Audit Form and an energy audit report to the Director.

Other Provisions of the Bill

12. The Director may issue an improvement notice to developers, owners and responsible persons to direct the recipient of the notice to remedy the contravention of any requirement under the Bill (clause 26).

13. For the enforcement of the Bill, the Director may appoint any public officer in the EMSD at or above the rank of Assistant Building Services Inspector as an authorized officer with certain enforcement powers including the power to enter the non-residential units of a prescribed building, inspect any building services installation in a prescribed building and require the production of documents and information. It shall be an offence if a person who, without reasonable excuse, fails to provide such documents or information or obstructs an authorized officer in the exercise of his powers and the maximum penalty for the offence is a fine of level 5 (\$50,000) and imprisonment for 6 months (Part 6).

14. The Director will keep a Register of Registered Energy Assessors and the Register will be made available for inspection of the members of the public (Part 7).

15. Any person who is aggrieved by certain decisions of the Director as set out in clause 32 may appeal to the Buildings Energy Efficiency Appeal Board appointed under clause 35 of the Bill.

16. To provide practical guidance in respect of any standard or requirement under the Bill, clause 40 proposes that the Director may issue any code of practice or approve any code of practice issued by any body or authority that the Director thinks fit. Such code of practice is not subsidiary legislation.

Application to the Government

17. The Bill applies to the Government except that neither the Government nor any public officer in the capacity as such is liable to be prosecuted for an offence under the Bill and the Government is not liable to pay any fee under the Bill (clause 3).

Public Consultation

18. According to the LegCo Brief, the Government conducted a 3-month public consultation on the proposed mandatory implementation of BEC in March 2008. The majority of the views received supported the implementations of the mandatory scheme. In June and July 2009, the Advisory Council on the Environment, the Energy Efficiency and Conservation Sub-committee of the Energy Advisory Committee and the Business Facilitation Advisory Committee and they supported the proposal.

Consultation with LegCo Panel

19. The Panel on Environmental Affairs (EA Panel) received a briefing on the legislative framework of mandatory implementation of BEC on 15 July 2009.

20. While supporting the need to promote energy efficiency and conservation in buildings, some members expressed the concern that the proposed mandatory implementation of BEC would become an additional burden on owners of pre-enactment buildings, particularly those smaller developments and those without Incorporated Owners, who would have much difficulty in funding the energy audits and maintenance of energy-efficient installations. They considered that the Administration should provide the necessary assistance to building owners to alleviate their hardship and facilitate compliance with the scheme. The Administration was also asked to spell out clearly the qualifications of competent persons to carry out energy audits.

Conclusion

21. The Bill seeks to introduce a new policy to require developers and owners of certain types of buildings to comply with energy efficiency requirements, which have been operated by EMSD as a voluntary scheme since 1998. In light of the concerns raised by members of the EA Panel, members may wish to examine the policy perspective and operational aspects of the new scheme in detail.

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