

Spring 3-1-2010

The American Clean Energy and Security Act of 2009 (H.R.2454)

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Recommended Citation

The American Clean Energy and Security Act of 2009 (H.R.2454), 1 Wash. & Lee J. Energy, Climate & Env't. 203 (2010), <https://scholarlycommons.law.wlu.edu/jece/vol1/iss1/14>

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Legislative Summaries

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The American Clean Energy and Security Act of 2009 (H.R.2454)

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Introduced by Congressmen Henry Waxman (D-CA) and Edward Markey (D-MA), H.R. 2454, the American Clean Energy and Security Act of 2009 (ACES), was narrowly passed by the House of Representatives on June 26, 2009. ACES would create a comprehensive energy economy that incentivizes and mandates decreased emissions.

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Title I: Clean Energy

Title I consists of clean energy provisions that would advance specific goals through industry studies, public education, and the development and implementation of technology. The primary focus is to create a combined efficiency and renewable electricity standard, promote carbon capture and sequestration, and advance the utilization of clean transportation. Title I also includes provisions regarding state energy and environment development accounts, Smart Grid advancement, transmission planning, clean energy innovation centers, and nuclear and advanced technologies.

Subtitle A, through an amendment to the Public Utilities Regulatory Policies Act of 1978 (PURPA), would require that a specified percentage of retail electric suppliers' load be generated from renewable resources. Renewable energy resources are wind, solar, and geothermal energy, renewable biomass, biogas, and biofuels, qualified hydropower, and marine and hydrokinetic renewable energy. Under ACES, a "retail electric supplier" is an electric utility that sold not less than 4 million megawatt hours of electric energy to electric consumers for purposes other than resale. The required percentage of the suppliers' load would increase incrementally from 6% in 2012 to 20% in 2020.

Retail electric suppliers, under threat of civil penalty, would be required to annually report renewable energy credits and electric savings meeting that year's combined target. One federal electricity credit would be issued to generators of renewable electricity for each megawatt hour of renewable electricity generated. Subtitle A also would require that federal agencies procure at least 20% of their electricity through renewable resources.

Subtitle B would require the Environmental Protection Administration (EPA) to devise a comprehensive strategy to overcome the legal and regulatory barriers to the commercial-scale deployment of carbon capture and sequestration. The EPA would be directed to establish an approach to certifying and permitting carbon-dioxide geologic sequestration sites. The Carbon Storage Research Corporation, subject to a referendum of the country's fossil-based electricity distribution utilities, would be created to collect assessments on distribution utilities to fund commercial-scale demonstration of carbon capture/storage technologies that have the potential to mature into commercial readiness.

Subtitle C contains provisions regarding clean transportation. The Secretary of Energy would be empowered to provide financial assistance to support the deployment and implementation of electric drive vehicles into the electricity grid and the manufacture of plug-in electric drive vehicles. Utilities

would be required to develop plans to support the use of plug-in electric vehicles.

Title II: Energy Efficiency

Subtitle A would amend the Energy Conservation and Production Act (42 U.S.C. 6833) to change national building code energy efficiency targets. On the date of enactment, the efficiency target would be reduced by 30% for all new buildings. Effective January 1, 2014, energy requirements for residential buildings would be reduced by 50%, and an equal reduction would be required for commercial buildings, effective January 1, 2015. While states and localities would be responsible for adopting and enforcing codes to meet the new targets, the Secretary of Energy would be required to support the development of codes that meet the targets and support local adoption of such codes. Current homeowners would not be subject to the new requirements and would not be audited or required to retrofit their houses. The EPA must develop a model program for labeling new buildings for energy performance. A grant program would be established in the Department of Housing and Urban Development to support local building code enforcement, including energy efficiency codes.

The Retrofit for Energy and Environmental Performance (REEP) program would be established to "facilitate the retrofitting of existing buildings across the United States to achieve maximum cost-effective energy efficiency improvements . . ." in nonresidential buildings. Public and assisted housing must have preferential access to at least 10% of the funding. The Federal share of support for any project funded under REEP must not exceed 50% of the costs and must be provided on a matching basis.

The cost of permits for installation of solar energy systems would be capped at \$500 for residential structures and at \$10,000 for nonresidential structures. The Department of Energy (DOE) would issue regulations prohibiting private covenants from restricting the installation of solar energy systems.

Subtitle B would amend the technical standards for lighting fixtures and appliances, and would change the role of appliance efficiency in building codes. A DOE program would be created to reward retailers for successfully marketing high-efficiency appliances and for the return and recycle of inefficient appliances. Additionally, Subtitle B would authorize the EPA's WaterSense program, a voluntary program to label water-efficient products and services in a manner similar to what is already done for energy-efficient products under the ENERGY STAR program. Federal agencies would be

directed to make cost-effective, water-efficient procurement decisions by purchasing WaterSense-certified products whenever possible.

Subtitle C concerns transportation efficiency and would amend the Clean Air Act (CAA) to require the EPA to establish emissions standards for new heavy-duty vehicles and nonroad vehicles. The Department of Transportation would be directed to integrate greenhouse gas (GHG) reduction planning measures into its transportation planning process. The SmartWay Transport Partnership—an existing program to help truckers upgrade to more fuel efficient vehicles—would be expanded.

Subtitle D contains provisions regarding industrial energy efficiency programs. The Secretary of Energy would be required to establish ANSI/ISO standards for industrial energy efficiency. An award would be established for innovations that increase the efficiency of thermal electric generation processes—the value of which would be capped at 25% of the energy recovered during the first five years of operation.

The Secretary of Energy would establish a national program to inform electric motor users of the potential energy efficiency gains that may be realized by upgrading to more efficient motors, and a rebate program would be established for replacing low-efficiency electric motors with high-efficiency models. The Secretary of Commerce must establish a grant program for states to establish revolving loan funds for manufacturers to improve energy efficiency.

Subtitle E contains provisions that would modify federal contracting practices to include energy savings and energy conservation considerations. Subtitle F concerns public institutions and would authorize the Secretary of Energy to make grants to private, nonprofit community development organizations to provide financing to businesses that improve energy efficiency.

Subtitle G contains miscellaneous provisions and would establish a national energy efficiency goal of overall energy productivity (measured in gross domestic product per unit of energy input) of at least 2.5% per year through 2030. The EPA would determine the feasibility of establishing a national program to label products sold in the United States for carbon content. Subtitle H promotes energy efficient housing programs and initiatives.

Title III: Reducing Global Warming Pollution

Title III addresses global warming due to pollution by greenhouse gas (GHG) emissions. The centerpiece is a cap-and-trade program for GHG emissions under which the EPA would set an annual cap on national emissions

and companies would be required to purchase emission permits. Title III specifies national GHG emissions reduction targets of 97% of 2005 levels by 2012, 83% by 2020, 58% by 2030, and ultimately, 17% by 2050.

Multiple hydrocarbons and other pollutants would be regulated under Title III, including carbon dioxide (CO₂), methane (CH₄), and byproduct hydrofluorocarbons (HFCs). The EPA would be charged with establishing a national registry to track GHG emissions and a comprehensive reporting system. Certain entities would be required to report to the EPA their GHG emissions, production of GHG-emitting fuels and natural gas, and sequestration of GHGs.

Emission allowances, in the form of tradable permits, could be supplemented by reductions in domestic emissions of exempted sources, international offsets, or by emission allowances from other countries with comparable emissions laws. Entities could trade in domestic and international offset credits for emission allowances, with offsets overseen by an independent Offsets Integrity Advisory Board. Requiring allowances to be distributed in a combination of annual auctions and non-auction sales would allow market forces to calibrate increases in allowance prices to the incremental cost of emitting GHGs. For example, a given company's operating costs could be reduced by a decrease in its emissions because the decrease in emissions would allow that company to lower its expenditure on emission allowance purchases and sell unused allowances. Thus, the goal of the cap-and-trade program is to incentivize pollution reduction.

Title III also would provide for the distribution of allowances in non-auction sales in furtherance of three primary goals: (i) protecting customers from energy price increases; (ii) assisting industries in transitioning to clean energy; and (iii) promoting use of efficient and clean energy technology. Recognizing that deforestation accounts for about 20% of GHG emissions worldwide, Title III also would establish a program in developing countries to reduce such emissions and to protect forests. Title III does contain protections for certain energy-intensive industries, including the oil, steel, electricity, and rubber industries. To address the disproportionate burden the cap-and-trade system would place on energy-intensive and trade-exposed industries, a set percentage of allowances to cover increased costs resulting from the cap-and-trade program would be provided to such industries. A "strategic reserve" of allowances would be established to help contain costs of meeting annual tonnage limits borne by entities required to participate in the cap-and-trade program.

Reports by the EPA and the National Academy of Sciences (NAS) would be submitted to Congress every four years. The EPA report would be an

impact report, laying out progress made and identifying further steps to be taken to improve monitoring, verification, efficiency of reduction methods, and in general how to better address climate change. The NAS report would provide recommendations that focus on technological and scientific progress in climate change. The President would be charged with directing the relevant federal agencies to use their statutory authority to take measures requested by the reports. If the NAS reports that emission targets are not on schedule or that global actions will not maintain safe global average surface temperature and atmospheric GHG concentration thresholds, the President would be required to submit a plan to Congress identifying actions that will achieve necessary GHG reductions.

Title IV: Transitioning to a Clean Energy Economy

Title IV is intended to support the transition to a clean energy economy through ensuring real reductions in industrial emissions, planning for the transition of jobs and workers in the new economy, and providing assistance to consumers in contemplation of potential price increases.

Subtitle A promotes the global effort to reduce GHG emissions through the distribution of emission allowance rebates and creation of an international reserve allowance program. The emission allowance rebate program is designed to compensate the owners and operators in certain domestic industrial sectors for GHG emission costs incurred under the new regulatory scheme. Subtitle A also would require the United States to work proactively under the United Nations Framework Convention on Climate Change to establish binding agreements between all major GHG-producing countries to contribute equitably to the reduction of GHG emissions.

Subtitle B concerns green jobs and worker transition. The Secretary of Education would be able to award competitive grants to develop programs of study focused on emerging careers in clean energy, renewable energy, and similar fields. The Secretary of Labor must establish an internet-based information clearinghouse to assist renewable energy career and technical education and job training programs. An additional provision would establish a program to provide several forms of financial assistance to workers displaced due to industry changes resulting from the legislation's amendment of the CAA.

Subtitle C deals exclusively with consumer assistance. An Energy Refund Program would be established to provide cash to low-income households to compensate them for the estimated loss in their purchasing power resulting from the implementation of certain programs under ACES. Tax credits,

through a modification of the Earned Income Credit Amount, will also be provided to low-income individuals with no qualifying children to compensate for losses.

Title V: Agricultural and Forestry Related Offsets

Title V would direct the Secretary of Agriculture to establish a program for governing the generation of offset credits from agricultural and forestry sources, and in turn promulgate regulations to implement the program. The Secretary specifically would be directed to establish methodologies for offset practices, including standard methodologies for activity baselines, quantification methods, and leakage.

EDITOR'S NOTE: A compromise energy and climate change bill was scheduled to be introduced in the U.S. Senate by Senators John Kerry (D-MA), Lindsey Graham (R-SC), and Joe Lieberman (I-CT) on April 26, 2010. However, Senator Graham, the only Republican sponsor of the compromise legislation, pulled his support for the bill on the eve of its scheduled introduction. As of the date of publication, introduction of this compromise energy and climate bill has been delayed. Although the bill's future is uncertain, the bill is not dead, as Senator Graham may renew his sponsorship of the bill.

Also on April 26, 2010, Senate Majority Leader Harry Reid (D-NV), announced his plan to send the Senate's original climate bill, S. 1733, to the EPA for an economic analysis that must be completed if the bill is to have any chance of consideration by the full Senate during the summer of 2010. If Senator Graham rejoins Senators Kerry and Lieberman as a sponsor of the compromise climate and energy bill, and that bill is in turn introduced, it is likely that the compromise bill will be considered by the full Senate instead of S. 1733.