

ICLEI's Analysis of the ACES Climate Bill



What Local Governments Need to Know

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Why ACES Matters for Local Governments

ICLEI created this analysis¹ to inform its members about the local government relevance of H.R. 2454, the American Clean Energy and Security Act (ACES), also known as Waxman Markey, passed by the House of Representatives on June 26, 2009.

Now is the time for local government staff to familiarize themselves with the details of ACES—to understand how it may impact their operations and communities, and if they wish, to speak out and advocate for alterations that empower local climate action.

This document covers the key questions on ACES, from the local perspective:

- **How will the regulations and requirements in ACES impact local governments? What compliance issues should local governments anticipate?**
- **Does ACES take into account the needs and challenges of local governments, including climate adaptation?**
- **What programs, projects, and funding opportunities within ACES can help local governments reduce emissions and expand clean energy?**

View a quick summary of ACES and local governments below, or read the detailed breakdown in these five sections: Funding, Opportunities, Programs, Requirements, Adaptation.

Throughout this analysis, links can be found to resources providing background information for certain subjects. Citations to relevant ACES sections are made available as (Sec. ____), and where ACES language stands as an amendment to the Clean Air Act, this is noted in the citations as (CAA Sec. ____).

While the Senate is currently considering legislation similar to ACES, this analysis provides relevant information for local governments regarding congressional developments. In the event of Senate passage of climate and energy legislation, both the House of Representatives and the Senate would enter into a process to reconcile the differences between ACES and a potential Senate bill.

¹ This analysis is intended exclusively for educational and informational purposes only and does not constitute legal advice or services under any circumstances. This analysis applies only to H.R. 2454 as placed on the Senate Calendar on July 7, 2009, and not subsequent iterations.

Summary for Local Governments



ACES would create a [national energy efficiency and renewable energy standard](#), create a [cap and trade](#) system with [offsets](#), track greenhouse gas emissions across the economy, create grant programs for clean energy deployment, establish national standards for energy efficiency in buildings, create a retrofit program, and contain adaptation provisions. The bill leans heavily on state governments; however there are locally relevant provisions contained within the bill:

- Funding in the form of [allowances](#), or carbon emissions permits, that would be administered to states based on population and energy consumption. States would be required to provide at least 12.5% of this funding to local governments for [smart grid](#) peak demand reduction goals, building retrofits, energy efficient manufactured homes replacement, building energy performance labeling, and renewable energy technology deployment.
- Funding and grants for clean energy development, water efficiency, cleaner and more efficient vehicles, and a certified stoves replacement program.
- A government corporation to help finance clean energy development, which would provide support for [Property Assessed Clean Energy \(PACE\) type bonds](#).
- The possibility for local governments to consider energy efficiency projects and [renewable energy credit](#) projects such as those seen under [California's A.B. 2466](#), since [states program rules](#) will apply for the national energy efficiency and renewable energy standard: 6% in 2012 moving gradually to 20% in 2020.
- National building efficiency standards: 30% reduction in energy use in 2010; 50% reduction in energy use in 2014; and 5% additional reduction in 2017 and every three years after to be met with building codes set at either the state or local level. Allowances for code development and enforcement to be administered at the state level.
- Offset credit, available for approved projects outside of the cap and trade program to reduce GHGs that are not required by any law, representing a possible opportunity for local governments.
- Possible opportunities to partner with research and educational institutions for clean energy research and education centers and programs.
- A building retrofit program developed by the EPA, including standards for residential and non-residential retrofits, with allowance values available to finance 50% of the cost of retrofits.
- Various HUD energy efficiency programs, tree planting programs, and community programs including green banking centers.
- Regulation of electricity producers, excepting qualified waste-to-energy systems and qualified steam and electricity co-generation facilities. Preempts other cap and trade programs from 2012–2017.

- Landfills may fall under eventual EPA performance standards, and if so would not be eligible for offset project credits.
- Non-capped sources emitting more than 10,000 annual tons of [CO₂e](#) would be required to report emissions, with a possible requirement for fleets.
- MPOs and states would be required to develop goals and strategies to reduce transportation-related GHG emissions.
- A prohibition of restrictions on solar energy installations, and maximum limits on solar permit costs for Community Block Grant eligibility.
- Increased flexibility in the Energy Efficiency and Conservation Block Grants program.
- The establishment of protections for [feed-in tariffs](#) at the state level.
- Adaptation funding at the state level for states with plans, as well as assistance and scientific research for the development of these plans. Provides assistance for state, tribal and local governments in adaptation efforts.

I. Funding for Local Governments

States to Administer Funding to Local Governments Through SEED Accounts

Funding generated under the [cap and trade](#) program in the form of emission permits known as [allowances](#) would be distributed to the states based on population and energy consumption. This funding source would be directed to accounts handled by state energy offices called “State Energy and Environment Development” (SEED) Accounts (Sec. 132).

States would be required to administer a total of 12.5% of their SEED funding to local governments to be used exclusively for [smart grid](#) peak demand reduction goals (Sec. 144), the building retrofit program (Sec. 202), energy efficient manufactured homes (Sec. 203), building energy performance labeling program (Sec. 204), and renewable energy technology deployment (Sec. 132). States would have the latitude to distribute more to local governments for renewables, efficiency and smart grid purposes (Sec. 132). Funding to support the building codes provisions would also be administered through the SEED accounts (Sec. 201).

A New Government Corporation to Help Finance Clean Energy Development

The Clean Energy Development Administration (CEDA) is designed to be a government corporation initially backed by \$7.5 billion in “green bonds” to provide support for the deployment of efficiency and renewables (Sec. 181-184). CEDA would supply clean energy deployment loans for timely projects with maximum GHG reductions per dollar invested (Sec. 187). Most relevant for localities, CEDA would supply voluntary [Property Assessed Clean Energy \(PACE\) type bonds](#) where property owners take out a loan to finance energy efficiency retrofits and renewable energy systems and then loan is then assessed to the property tax as paid back over 20 years. There is no requirement that states authorize local governments to create these PACE type programs (Sec. 188).

Renewable Energy Infrastructure Funding Program

The DOE and EPA are directed provide [allowances](#) to state and local governments to support the deployment of renewable energy for years with allowance allocations of 0.28% for 2012 – 2016 under a Renewable Energy Incentives Program (Sec. 788).

Clean Energy Curriculum Development Grants

The Department of Education in consultation with the Departments of Labor and Energy are directed to award education grants for partnerships between local education agencies, higher education institutions, and community representatives to develop programs for clean energy careers and job education programs (Sec. 421).

Water Efficiency Grants

Authorizes EPA grants for entities, including local governments wastewater or sewerage utilities, municipal water authorities, energy utilities, water utilities, or nonprofit organizations with water efficiency programs. These programs must offer incentives to end users who purchase and install water efficient products such as WaterSense labeled products. Appropriations: \$50 million for 2010; \$100 million for 2011; \$150 million for 2012; 100 million for 2013; and \$50 million for 2014 (Sec. 217).

Grants for Cleaner and More Efficient Vehicles

Aiming to foster a fleet of [vehicles that will connect to the grid](#), DOE is directed to supply assistance to governments, including local, in the form of competitive grants for offsetting the costs of purchasing electric vehicles, setting up charging stations and battery exchanges, and integrating [smart grid](#) equipment for vehicle plug in (Sec. 122). Utilities will be required to develop electric vehicle infrastructure plans including charging stations including street parking and parking garages (Sec. 121). Additionally, local governments would be able to apply for funding under the existing EPA SmartWay Program, designed to help truckers upgrade to less polluting and more fuel efficient vehicles (Sec.223).

II. Opportunities for Local Governments

Renewable Energy and Efficiency Projects

Under the [national renewable energy and efficiency standard](#), local governments may be eligible to contract for or to receive credit for developing efficiency and renewable energy projects as seen with [California's A.B. 2466](#). ACES would require large utilities to meet targets efficiency and renewables: 6% in 2012 moving gradually to 20% in 2020. Utilities are required to demonstrate efficiency savings of their own or through contracting with other entities.

The bill preserves [state programs such as renewable portfolio standards](#), relies on state systems for issuance and tracking of [renewable energy credits](#), and allows states to go above and beyond the federal standard. Efficiency savings would be required to be above and beyond mandatory savings such as building code improvements. States will be able to request the authority to verify efficiency savings. Certain sources will qualify for renewable energy credits, as defined in the act, including waste to energy for municipal solid waste, landfill gas, wastewater treatment gas, and 3x credit for distributed renewable energy (Sec. 101).

Offset Projects

ACES will allow for innovation to develop [offset](#) projects and receive credits for those projects. Local governments offset projects is an emerging concept already being explored by some. Within two years of enactment, the EPA will establish an offset credit program. Under the program, offsets credits must be “additional,” “verifiable,” and “permanent” and represent GHG reduction, avoidance, or sequestration that avoids or minimizes any negative human or environmental impacts. The program must include the destruction of methane and its conversion into CO₂ as a reduction of GHGs to be considered for credit.

Once the EPA develops the offset program, there may be opportunity for local governments to explore offset credit for sewage treatment GHG reduction projects (CAA Sec. 733). Landfill projects will likely not be available for offset credit, depending on the outcome of the new stationary source standard requirements for GHGs (CAA Sec. 811). This is because to receive offset credit, the action must not be required by any law (CAA Sec. 732). The USDA is directed to administer its own separate offset program similar to the EPA’s for agriculture and forestry and this program will include projects for urban forestry (Sec. 503).

Clean Energy Research and Education

Ten Regional Centers for Energy and Environmental Knowledge and Outreach are to be established at institutions of higher education for building audit workforce training. These centers must work with state and local government economic development entities to leverage financial incentives for the protection and growth of local business and industry (Sec. 174).

Additionally, local governments may consider possible partnerships with educational institutions for clean energy research and education programs. ACES establishes eight Regional Energy Innovation Hubs for the development and commercialization of clean energy technology (Sec. 171) along with Building Assessment Centers and Technical Training Centers with institutions of higher education (Sec. 173). DOE is authorized to award consumer behavior research grants for institutions of higher education institutions to study consumer adoption of efficiency improvements (Sec. 265).

Municipal Solid Waste as a Fuel Source

ACES amends the renewable fuels standard under the Clean Air Act to include municipal solid waste as a renewable biomass (Sec. 126).

III. Programs Relevant to Local Governments

Building Retrofit Program – REEP

States could elect to administer this voluntary Retrofit for Energy and Environmental Performance Program (REEP) through local governments. REEP would be developed by EPA in consultation with the DOE. Building off of existing standards like Energy Star, the EPA would develop standards for residential and non-residential retrofits. States and localities would be provided with detailed descriptions of funding options, model forms, accounting aids, agreements and guides to best practices.

States could administer the program through local governments and funding used for this purpose from the SEED Accounts will be part of 12.5% local government distribution. States and local governments could administer the REEP program through other entities like utilities, contractors and energy service companies. Funding would be conditional upon meeting

certification and inspection standards. Funds could be used for credit support, revolving loan funds, loan payments bonded through utility bills, local government programs to provide REEP services, and other means as approved by the EPA. Funds would be available to finance 50% of the cost of retrofits with funding increasing proportionate to efficiency achievement. Local governments in non REEP participating states could request to receive direct funding (Sec. 202).

Energy Efficient Manufactured Homes Program

States could elect to administer through local governments this program designed for low-income families living in pre-1976 manufactured homes for federal rebates of up to \$7,500 towards the purchase of a new Energy Star-rated manufactured home. Funding counts toward the 12.5% local government distribution (Sec. 203).

Building Labeling Program for Efficiency

States could elect to administer this voluntary building efficiency labeling program for new construction through local governments. The EPA would be required to develop a model voluntary program for new construction to label new buildings for their energy performance characteristics using building type consumption data to be developed by the Energy Information Administration. The EPA would encourage local governments to broaden access to information about building energy use through disclosure in tax, title and other records. Funding for this program counts towards the 12.5% distribution (Sec. 204).

Water Efficiency Programs

Authorizes EPA's existing WaterSense program – a voluntary water products labeling program based on efficiency similar to Energy Star. Local governments currently partner in this program to strengthen outreach efforts, reduce market research costs, receive recognition from the EPA as an environmental steward, and to access free water efficiency tools and resources (Sec. 215).

Smart Grid Electricity Demand Reduction Programs

FERC is directed to coordinate and support a national program to reduce electricity usage at peak demand times through energy efficiency or [demand response programs](#) including [distributed generation](#), energy storage and [smart grid](#) technology. States can elect to administer this program through local governments and thus counts towards the 12.5% SEED Accounts local government distribution (Sec. 144).

Certified Stoves Program

Directs the EPA to establish a program to assist in replacing wood stoves or pellet stoves that do not meet high efficiency performance standards. Local governments would be eligible to receive funds for replacement or refurbishing and installation of old inefficient stoves. Funds should additionally be used to support existing programs and incentives (Sec. 218).

HUD Energy Efficiency Programs

HUD is directed to create building efficiency standards (Sec. 284) that must be met for 50,000 dwelling units under a demonstration program (Sec. 285). Allocates \$2.5 billion to the Community Development Block Grant program for efficiency for the year 2010 (Sec. 296).

Would require jurisdictions to provide a description of sustainability strategies including efficiency, renewables, and integration of land use and transportation to receive affordable housing assistance funding from HUD under the Cranston Gonzalez Act (Sec. 297). Establishes a green building standards requirement for public housing revitalization grants under HOPE IV

(Sec. 299). Additionally, HUD is directed to obtain information from public housing authorities regarding the energy costs for residents and energy efficiency efforts (Sec. 299G).



Community Programs

Programs that will benefit communities and are relevant to local government sustainability goals include: energy efficient and location efficient mortgages (Sec.s 286-293); green guarantees for the green portion of some mortgages (Sec. 299I); green banking centers where information for efficiency audits, ratings, financing, and energy efficient mortgages will be made available (299E); a competitive grant program for private community development corporations for efficiency, renewables, financing mechanisms, technical assistance, and job promotion to benefit low income residents. (Sec. 264); and a grant program for community development organizations to increase sustainable low-income community development capacity (Sec. 298).

Tree Planting Programs

Authorizes a grant program through DOE to provide funding and technical assistance to utilities for tree planting programs with possible municipal and utility partnerships where no tree planting organizations are established (Sec. 205). Additionally, HUD is directed to provide incentives to developers receiving HUD assistance to partner with tree planting organizations (Sec. 295).

IV. Requirements Relevant to Local Governments

Regulated Entities Under the Cap and Trade Program

Regulated entities under the [cap and trade](#) program would include electricity power producers – excluding waste-to-energy operations using more than 95% of MSW and qualified steam and electricity co-generation facilities (CAA Sec. 700). Other covered entities would include: oil and gas producers and importers, industrial sources, and natural gas local distribution companies (CAA Sec. 700 and CAA Sec. 722). These entities will be required to obtain [allowances](#), carbon emission permits, and/or [offset](#) credits to account for their GHG emissions (CAA Sec. 721-723).

Reporting GHG Emissions

To track economy-wide emissions, ACES establishes a GHG reporting requirement for all entities regulated under the [cap and trade](#) program, and some non-regulated entities emitting more than 10,000 annual tons of [CO₂e](#). The EPA is directed to consider including automobile fleets emitting over 25,000 tons CO₂e as part of this GHG registry (CAA Sec. 713).

Possible Landfill Performance Standards

Landfills would likely become subject to performance standards as the result of an EPA rulemaking covering GHGs emitted from stationary sources (CAA Sec. 811). Such regulation would likely exclude landfill GHG reduction projects from receiving credit under the [offset](#) program (CAA Sec. 732). However, landfill gas is included as a qualified source for [renewable energy credit](#) (Sec. 101).

National Buildings Efficiency Targets, Met Through State or Local Codes

National targets for buildings energy efficiency would be set at: 30% reduction in energy use in 2010; 50% reduction in energy use in 2014; and 5% additional reduction in 2017 and every three years after. To meet or exceed these targets, states and localities would be given complete deference to develop their own codes. DOE would support consensus code-setting organizations in developing a national code to act as a backstop for non-compliant jurisdictions. DOE is instructed to establish an enforcement mechanism.

To assist in code development and enforcement, states in compliance would be eligible for 0.5% of [allowances](#) destined for SEED Accounts to be shared between states and localities based on relative enforcement duties. In states where local governments perform all code enforcement, states would retain 50% of this funding. Local governments in non-compliant states would be able to request certification for eligibility to receive the allowance portion that would have been distributed to the locality (Sec. 201). Additionally, the bill authorizes a program to provide matching grant funds to local building code enforcement departments (Sec. 207).

Transportation Planning and GHG Strategies

The EPA would consult with the DOT, States and Metropolitan Planning Organizations (MPOs) to establish national transportation-related GHG reduction goals. Requires States and MPOs to develop goals and strategies to reduce transportation related GHG emissions (Sec. 222).

Banning Restrictions on Residential Solar Energy Installations

DOE is directed to issue regulations prohibiting any private covenant, contract provision, lease provision, homeowner's association rule, or similar restrictions that may prohibit the installation of residential solar energy systems (Sec. 208).

Limiting Solar Permits Cost for Community Block Grant Eligibility

For local governments to receive Community Development Block Grants, permits for license, construction or installation of a solar energy system could not exceed \$500 for residential structures and for non-residential structures the permit cost will not exceed 1% of the total cost of the installation or construction of the solar energy system but not in excess of \$10,000 (Sec. 209).

Increased Flexibility for Energy Efficiency and Conservation Block Grants

Would remove restrictions on EECGB funding for revolving loans and subgrants (Sec. 262) and allows small communities to participate in joint EECBG programs (Sec. 263).

Feed-in Tariff Protection

Would protect [feed in tariffs](#) from legal challenges at the state level. Feed in tariffs require utilities to buy renewable energy at above market rates for small scale [distributed generation](#) facilities (Sec. 102).

Pre-emption of Other Cap and Trade Programs Between 2012 and 2017

States, or their political subdivisions, would be preempted from implementing or enforcing a [cap and trade](#) program between 2012 and 2017; however, ACES permits: non-cap and trade targets, limits, standards, regulations or programs to reduce GHGs (CAA Sec. 861).

V. Climate Adaptation Provisions

Global Change Research and Data Management Program

The Program would, among other activities, provide: land use and development scenarios, downscaling of climate model data, identified economic sectors and regional zones, and workshops for outreach and to facilitate information exchange between regional, State, and local decision makers, experts and other stakeholder groups (Sec. 451).

National Climate Service

Establishes the National Climate Service and defines activities within NOAA to advance the understanding of climate vulnerability at all levels from global to local; provide forecasts on climate variability; support the development of adaptation and response plans by federal, state and local governments, the private sector and the public; and address the needs of local and regional decision makers for information and tools to develop adaptation and response plans. The Service would facilitate dialogue between relevant stakeholders, and work with the U.S. Global Change Research Program and the Regional Integrated Sciences and Assessments teams (Sec. 452).

State Programs to Build Resilience to Climate Change Impacts

States would be required to have adaptation plans, as approved by the EPA, to receive [allowances](#) for implementation efforts. Plans must contain adaptation projects that are prioritized by cost effectiveness, and be revised and re-approved every five years (Sec. 453).

National Strategic Action Plan for Public Health and Climate Change

Directs Health and Human Services to create a National Strategic Action Plan to assist health officials in preparing for and responding to the health impacts of climate change. In preparing this plan, HHS is instructed to consult with interested stakeholders, the Centers for Disease Control, the EPA, other appropriate federal agencies, and state, local and tribal governments. Directs the HHS, through the CDC, to provide funding for preparedness planning at the international, national, State, tribal, regional, and local levels to respond to the health impacts of climate change (Sec. 463).

Natural Resources Climate Change Adaptation Strategy

Establishes a Natural Resources Climate Change Adaptation Strategy to be created in consultation with various stakeholders including local governments, conservation organizations and scientists. The Strategy would include and assessment of natural resource vulnerability, a description of current research, identification of high risk natural resources, a list of conservation protocols and actions for federal agencies to protect resources (Section 476). Directs NOAA and the United States Geologic Survey to provide technical assistance to state, local and tribal governments to plan for and address natural resource climate change impacts (Section 477).

State Natural Resources Adaptation Plans

In order to receive [allowances](#) for natural resource adaptation, states would be required to have approved plans in place (Section 479). Establishes the Natural Resources Climate Change Adaptation Fund with allocations to federal agencies for the purposes of, in some instances, working in cooperation with local governments (Section 480). Additionally establishes the National Wildlife Habitat and Corridors Information Program to create a geographic information systems database to inform planning and development decisions and to facilitate the use of this database by federal, state, local and tribal decision makers. The Department of the Interior is authorized to provide funding to state and tribal governments for activities that will support the development of the system (Section 481).