

State GHG Programs and the American Power Act of 2010



Summary & Recommendations | May 2010

The *American Power Act* (APA), released as a discussion draft on May 12, 2010 by Senators John Kerry (D-MA) and Joseph Lieberman (I-CT), contains many elements that impact state greenhouse gas (GHG) programs and activities. The following document provides: (1) a brief overview of provisions in APA that explicitly impact states and state regulators; (2) detailed section-by-section summaries of these provisions, and; (3) reactions and recommendations for strengthening the bill.

1. Overview of Provisions that Impact States and State Regulators

The following are elements of the bill that clearly impact states:

- State and regional GHG cap and trade programs are permanently preempted upon allocation of federal allowances (i.e. the northeast's Regional Greenhouse Gas Initiative, "RGGI," or programs like it, will not be allowed to continue); States with existing GHG cap and trade programs (RGGI states) are allocated two-thirds of 1% of allowances for 3 years, to be spent on GHG reduction programs; state/regional allowances issued prior to federal allocation may be converted to federal allowances based on auction prices.
- Other state GHG requirements and programs are explicitly not preempted.
- States have the ability to limit new offshore oil and gas development within 75 miles of shore and receive 37.5% of all revenue from this new development.
- There is a small allocation of allowances (2% in early years of the program) to states to support energy efficiency and renewable energy programs.
- Most of the near-term consumer protection elements of the bill will be overseen and implemented, in part, by states and state regulators (EPA establishes regulations and approves state plans):
 - The allocation to electric and natural gas consumers is through the local distribution utilities, which are in most cases regulated by state utility regulators. State regulators will have a significant role in deciding how the value of these allowances is invested on behalf of consumers, with a requirement that at least 1/5 of the natural gas allocation go to cost-effective energy efficiency programs for consumers. There is no dedicated efficiency allocation for electric consumers.
 - The allocation on behalf of oil and propane customers goes directly to the states, with a requirement that at least 1/2 of this value is invested in cost-effective energy efficiency programs for consumers.
- States and metropolitan planning organizations are provided planning support and funding up to \$1.875 billion annually to reduce GHG emissions from surface transportation through efficiency improvements, reduction in vehicle miles travelled, and reduced GHG emissions from transport fuels.
- There are many other references to states and state regulators in the bill that allow for input and consultation on studies and programs. (Not included in the following section-by-section summary.)

2. Detailed Summary of Provisions that Impact States and State Regulators

TITLE I	DOMESTIC CLEAN ENERGY DEVELOPMENT
Subtitle B	Offshore Oil and Gas
SEC. 1202	<p><i>Revenue Sharing from Outer Continental Shelf Areas in Certain Coastal States</i></p> <ul style="list-style-type: none"> • States to receive 37.5% of any oil & gas royalty, rent, or other payments, with 20% of that amount going to political subdivisions of the state along the coast • 12.5% of any oil & gas royalty, rent, or other payments to the Land and Water Conservation Fund • Remaining revenue to deficit reduction
SEC. 1204	<p><i>Reservation of Lands and Rights:</i> States may choose to prohibit leases within 75 miles of the coast, through state legislation and petition by the state, which shall be granted</p>
Subtitle D	Renewable Energy and Energy Efficiency
SEC. 1601	<p><i>Renewable Energy and Energy Efficiency:</i> establishes that the deployment of large-scale renewable energy and substantial improvement in energy efficiency are critical to the purposes of the Act</p>
SEC. 1602	<p><i>Rural Energy Savings Program</i></p> <ul style="list-style-type: none"> • Amends Subtitle D of the Consolidated Farm and Rural Development Act • Creates loans and limited grants for cost-effective energy efficiency programs run by public power and rural electric coops
SEC. 1603	<p><i>Support of State Renewable Energy and Energy Efficiency Programs</i></p> <ul style="list-style-type: none"> • Allocation: 2% of total allowances are allocated to tribes and states in the early years of the program; 0.5% competitively among Indian tribes; among states based on 1/3 among the 50 states, 1/3 population, and 1/3 energy consumption • Allowable uses: energy efficiency programs, renewable technology deployment, smart grid technology, or surface transportation capital projects (up to 10%) • Prioritizes existing efficiency program expansion and requires supplementing not supplanting existing programs
Subtitle E	Clean Transportation
Part II	Transportation Efficiency
SEC. 1711 (CAA 803)	<p><i>Greenhouse Gas Emissions Reductions through Transportation Efficiency:</i> EPA and Department of Transportation (DOT) shall support states and metropolitan planning organizations (MPOs) in the development of plans to reduce GHG emissions from surface transportation through efficiency improvements, reduction in vehicle miles travelled, and reduced GHG emissions from transport fuels</p>
SEC. 1712	<p><i>Investing in Transportation Greenhouse Gas Emission Reduction Programs:</i></p> <ul style="list-style-type: none"> • DOT shall distribute proceeds from the sale of allowances allocated under section 781(f)(3) to states and MPOs to support the implementation of plans to reduce GHG emissions through transportation efficiency; • 10% of allocation to MPOs, based on population; • Remainder of funds distributed competitively among states and MPOs based on emissions reductions, cost-effectiveness, increased mobility, and other factors of plan; • Allowance revenue of up to \$1.875 billion annually from 2013-2034

TITLE II	GREENHOUSE GAS POLLUTION REDUCTION
Subtitle B	Disposition of Allowances
SEC. 2101 (CAA 781)	<p><i>Allocation of Emission Allowances</i></p> <ul style="list-style-type: none"> • From 2013-2015, 51% of allowances, and from 2016-2025, 35% of allowances are allocated to electric local distribution companies (LDCs) on behalf of electricity consumers; allocation declines to zero from 2026 to 2030 (Sec. 781(a)(1)) • Beginning in 2016, 9% of allowances are allocated to natural gas LDCs on behalf of natural gas consumers; allocation declines to zero from 2026 to 2030 (Sec. 781(a)(2)) • From 2013-2015, 1.9% of allowances, and from 2016-2025, 1.5% of allowances are allocated to states on behalf of heating oil and propane consumers; allocation declines to zero from 2026 to 2030 (Sec. 781(a)(3)) • From 2013-2015, 0.5% of allowances, not to exceed a cumulative allowance value of \$1.55 billion are allocated to industrial energy efficiency (Sec. 781(b)(2)) • From 2013-2015, 0.5% of allowances, not to exceed a cumulative allowance value of \$1 billion are allocated to the rural energy savings program (Sec. 781(c)(5)(B))
SEC. 2101 (CAA 786)	<p><i>Exchange for State Allowances</i></p> <ul style="list-style-type: none"> • Establishes a mechanism for state allowances issued by CA, RGGI, or WCI to be exchanged for federal allowances • Exchange rate based on an amount sufficient to compensate the holder of the state allowance, based on the average allowance price in the year the allowance was issued
Sec. 2101 (CAA 788)	<p><i>Early Action Recognition</i></p> <ul style="list-style-type: none"> • 2/3 of the allowances allocated for early action (1% for three years) will go to states that have implemented a carbon cap and trade program (distribution based on the number of allowances issued) • The value of allowances is to be used to support programs that decrease GHG emissions, with priority for cost-effective programs such as energy efficiency.
Subtitle D	Ensuring Regulatory Predictability for Greenhouse Gases
SEC. 2305	<p><i>Retention of State Authority</i></p> <ul style="list-style-type: none"> • In Sec. 112 of the Clean Air Act, Adds a reference to the preemption of state cap and trade programs in Sec. 806(c) – see below • Defines that the terms: ‘<i>standard or limitation respecting emissions of air pollutants</i>’ and ‘<i>requirement respecting control or abatement of air pollution</i>’ include any provision to limit greenhouse gas emissions, require surrender to the State or a political subdivision of a State of emission allowances or offset credits established or issued under this Act, or require the use of such allowances or credits as a means of demonstrating compliance with requirements established by a State or political subdivision of a State. • This section means states can continue to adopt climate related policies as long as they are not those preempted in 806(c), which can include retirement of allowances or offsets created by this act, and as long as the policies are more stringent than this act
Subtitle F	Miscellaneous
SEC. 2501 (CAA 806)	<p><i>State Programs</i></p> <ul style="list-style-type: none"> • Allows for grants to state environmental agencies to address climate change programs related to this act • Allows for consolidated state planning and reporting related to requirements under this act and the use of allowances allocated to the state to conduct related activities

	<ul style="list-style-type: none"> • 806(c): <ul style="list-style-type: none"> ○ Permanently preempts state GHG cap and trade programs beginning with the year allowances are first allocated under this act ○ Explicitly does not preempt: general GHG limits or non cap and trade GHG programs, vehicle emissions requirements, or fuel emissions requirements
TITLE III	CONSUMER PROTECTION
Subtitle A	Investing in Low-carbon Electricity and Energy Efficiency for Consumer Protection
SEC. 3001 (CAA 782)	<p><i>Electricity Consumers</i></p> <ul style="list-style-type: none"> • Up to 10% of allocation to merchant coal generators and up to 4.3% of allocation to long term contract generators; • Remaining allowances distributed among LDCs based 75% on emissions and 25% on sales; • Allowance value to be used for consumer benefit, with oversight by public utility regulators; benefits to be distributed among ratepayer classes on a pro-rata basis, based on electricity deliveries to each class, and equitably among individual ratepayers within each ratepayer class; • EPA, in consultation with State utility regulators, to develop guidelines for use of allowance value for consumer benefit; income or profits to shareholders of a electric LDC shall not constitute ratepayer benefits; • Utilities to develop through regulatory proceedings and make public plans for use of allowance value; • EPA and Government Accountability Office (GAO) audits of allowance usage for consumer benefit; EPA report within 1 year of enactment on projected effect of allowance distribution system on retail electric rates
Subtitle B	Investing in Low-carbon Heating and Energy Efficiency for Consumer Protection
SEC. 3101 (CAA 783)	<p><i>Natural Gas Consumers</i></p> <ul style="list-style-type: none"> • Allowances distributed among LDCs based on gas deliveries; • Allowance value to be used for consumer benefit, with oversight by public utility regulators; benefits to be distributed among ratepayer classes on a pro-rata basis, based on electricity deliveries to each class, and equitably among individual ratepayers within each ratepayer class; • At least 20% of allowances must be used to support cost-effective energy efficiency programs for natural gas consumers; overseen by state PUCs; • EPA, in consultation with State utility regulators, to develop guidelines for use of allowance value for consumer benefit; income or profits to shareholders of a natural gas LDC shall not constitute ratepayer benefits; • Utilities to develop through regulatory proceedings and make public plans for use of allowance value; • EPA and Government Accountability Office (GAO) audits of allowance usage for consumer benefit; EPA report within 1 year of enactment on projected effect of allowance distribution system on retail electric rates
SEC. 3102 (CAA 784)	<p><i>Home Heating Oil and Propane Consumers</i></p> <ul style="list-style-type: none"> • Allocation distributed among states based on share of national emissions from heating oil and propane; • Allowance value to support state-supervised cost-effective efficiency programs and rebates for consumers; • At least 50% must support efficiency programs, with priority given to existing programs

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- and to comprehensive, fuel-blind, coordinated programs;
 - States to report annually to EPA on use of allowance value including demonstration of cost-effectiveness and energy savings achieved by efficiency program investments;
 - EPA may withhold allowance value from states not acting in accordance with consumer benefit requirements and distribute such allowance value to other states
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3. ENE Reactions and Recommendations

Passage of federal climate legislation would help all U.S. states address the risk of climate change, but climate and energy policy must create a productive partnership that respects state authority. Major federal environmental legislation over the past 40 years has allowed states to exceed minimum national standards, and APA should follow this precedent. While a limited “time out” for state cap and trade programs may be justified to install a federal program, after a brief period states should resume authority to tailor legislation to meet local needs. States often serve as policy laboratories for eventual federal legislation, and this dynamic innovation should not be stifled. For example, the Regional Greenhouse Gas Initiative (RGGI), the first mandatory GHG cap and trade program in the U.S., which has been successfully operating in 10 northeast and mid-Atlantic states since 2008, and has provided many important lessons for federal policy makers.

While APA eliminates the ability of states to have GHG cap and trade programs, it allows them to exceed the APA standards by requiring additional entities to hold and retire federal allowances. It also explicitly does not preempt states’ other GHG policies and encourages continued policy innovation. APA appears to strike a reasonable balance in terms of harmonizing all states under a federal cap and trade framework, while allowing states to continue developing new GHG policies and programs.

While APA does provide several sources of funding to states, the limited duration of these funding streams threatens to undermine existing energy and climate programs at the state level. For states with existing cap and trade programs, such as the RGGI states, the way that APA distributes allowances in the proposed federal program will have significant negative consequences. By preempting RGGI from the start of a federal program in 2013 through the time when the RGGI program is scheduled to end, in 2018, states will surrender over 1 billion allowances. At mean allowance clearing prices to-date (\$2.75/ton), those allowances would be worth \$2.97 billion. Absent enactment of APA, if RGGI states were to tighten the cap during program review in 2012, the value of allowances could be significantly higher. For example, a cap tightening of 20% and allowance prices of \$10/ton would imply a lost value of approximately \$10.2 billion. ENE estimates that investing auction proceeds in efficiency programs according to current state distribution formulas (a conservative assumption, given that states such as NY, DE and MD plan to increase efficiency investments), could deliver \$1.4–4.1 billion in efficiency funding and \$4.2–12.3 billion in consumer savings from 2013-2018.

Table 2: Potential State Budgetary Impacts of RGGI Preemption 2013-2018

State	2013-2018 Total Allocation <i>allowances</i>	Allowance Value		Efficiency Savings	
		at \$2.75/ton* \$ millions	at \$10/ton^ \$ millions	at \$2.75/ton* \$ millions	at \$10/ton^ \$ millions
Connecticut	61,496,457	\$ 169	\$ 492	\$ 296	\$ 863
Delaware	43,468,775	\$ 119	\$ 348	\$ 76	\$ 222
Maine	34,206,187	\$ 94	\$ 274	\$ 239	\$ 698
Maryland	215,647,902	\$ 592	\$ 1,725	\$ 395	\$ 1,152
Massachusetts	153,296,173	\$ 421	\$ 1,226	\$ 1,122	\$ 3,268
New Hampshire	49,567,645	\$ 136	\$ 397	\$ 282	\$ 821
New Jersey	131,633,198	\$ 361	\$ 1,053	\$ 643	\$ 1,873
New York	369,787,129	\$ 1,015	\$ 2,958	\$ 993	\$ 2,895
Rhode Island	15,290,624	\$ 42	\$ 122	\$ 125	\$ 363
Vermont	7,048,523	\$ 19	\$ 56	\$ 57	\$ 167
Total	1,081,442,612	\$ 2,969	\$ 8,652	\$ 4,229	\$ 12,321

* \$2.75/ton is mean auction clearing price to-date

^ Cap reduced by 20% and allowance price of \$10/ton

Preempted states are provided with 2/3 of 1% of allowances for 3 years (Sec. 788). Based on analysis of the ACES Act, this could deliver approximately \$2 billion to RGGI states. However, state energy and climate policies in the RGGI region are being built on the assumption of continuous funding through RGGI allowance value. And, as noted above, these programs multiply savings and benefits throughout the economy for each dollar invested. In order to extend these benefits for all consumers, a federal climate bill needs to ensure that states can use allowance value to fund existing programs such as energy efficiency.

A second mechanism for the funding of state supervised energy efficiency programs is through the APA allocations to electricity, natural gas, and heating oil and propane consumers. This allowance value is to be used for consumer benefit primarily under state utility regulatory oversight. However, APA only directs efficiency uses for natural gas, propane, and heating oil customers – omitting benefits to electric consumers.

APA essentially prohibits the use of electric utility allowances for efficiency investments. Unfortunately, this approach in APA runs counter to clear data that show that using electric utility allowances for energy efficiency is the lowest cost way to achieve emissions reductions. The APA ignores requests from public utility regulators seeking the option of investing a portion of this allowance value in expanded efficiency programs. Allowing efficiency to qualify would go a long way towards offsetting the preemption of RGGI and further dedicate electric allowance values across the country in a manner that maximizes consumer benefits.

In order to ameliorate the potential adverse impacts of preemption on existing state-supervised efficiency and clean energy programs, federal legislation should:

- **Require minimum efficiency funding levels in utility allocations.** Ensuring that utilities maximize consumer savings through efficiency investments builds on the successful RGGI model, reduces the price of carbon, saves consumers billions of dollars and reduces emissions at low cost. In the APA, natural gas utilities are required to invest 1/5 of free allocations in efficiency, and the same should be required of electric utilities.
- **Ensure that state utility commissioners have authority to support effective state efficiency programs with utility allocations,** thus allowing states to continue funding energy saving programs in the absence of RGGI auction revenue.

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