

THE BUILDING CODES ASSISTANCE PROJECT: AMERICAN CLEAN ENERGY AND SECURITY ACT OF 2009

Federal Requirements for a New National Building Energy Code

Updated May 26, 2009

The version of the **American Clean Energy and Security Act of 2009 (ACES)** approved by the House Committee on Energy and Commerce on May 26, 2009 outlines a number of provisions to ensure that the U.S. Department of Energy (DOE) will support building energy efficiency in state and local jurisdictions. The bill as written would establish a **new national building energy code** with ambitious energy efficiency targets and provisions for federal enforcement, if necessary. The text can be found in TITLE II—ENERGY EFFICIENCY, Subtitle A—Building Energy Efficiency Programs (beginning on page 200 of the bill text).

For more information on all of the provisions within ACES, please consult the following resources:

- American Clean Energy and Security Act of 2009 [bill text](#)
- Energy and Commerce Committee [press release](#)
- Alliance to Save Energy [bill analysis](#)



The proceeding text is a summary of the ACES draft language pertaining to the federal administration and funding of the new national building energy code as well as state requirements for compliance.

(ACES Section 201 amends The Energy Conservation and Protection Act (42 U.S.C. 6833), Section 304)

ENERGY EFFICIENCY TARGETS

- ◆ **Baseline code:** 2006 International Energy Conservation Code (IECC)/ASHRAE Standard 90.1-2004
- ◆ **30% below baseline:** effective upon enactment of ACES
- ◆ **50% below baseline:**
 - ◆ Residential buildings: January 1, 2014
 - ◆ Commercial buildings: January 1, 2015
- ◆ **5% additional savings relative to baseline every 3 years thereafter:**
 - ◆ Residential buildings: January 1, 2017 through January 1, 2029
 - ◆ Commercial buildings: January 1, 2018 through January 1, 2030
- ◆ **Further reductions:**
 - ◆ Effective January 1, 2033 and every 3 years thereafter, DOE shall determine new targets and building energy efficiency standards based on feasibility and life-cycle cost-effectiveness
 - ◆ Zero-net-energy buildings: DOE shall consider ways to achieve this goal for commercial buildings set in the Energy Independence and Security Act of 2007 (EISA)

ACES: BUILDING ENERGY EFFICIENCY PROVISIONS

A NEW NATIONAL BUILDING CODE

- ◆ A new national building code shall be established within 1 year after the deadline to establish energy efficiency targets

- ◆ Not less than 6 months before the effective date for each target, DOE must review existing/proposed national model codes and propose improvements based on the determined percentage by which they improve energy efficiency
- ◆ To support the development of new codes, DOE shall provide assistance to consensus-based code development organizations



- ◆ **State Adoption – within 1 year of establishment of new national building code; states shall:**
 - ◆ Update state building code to meet/exceed new national building code
 - ◆ Document that local governments representing at least 80% of a state's urban population have adopted codes that meet/exceed the new national code
 - ◆ Certify to DOE that these provisions are being met
- ◆ **DOE Confirmation of State Adoption**
 - ◆ Within 90 days of state certification, DOE will determine whether the state's building code meets the requirements above
 - ◆ If DOE determines the state code is deficient, DOE shall identify the deficiency and indicate areas where the state code can improve to meet the requirements
 - ◆ States may revise code and submit new certifications to DOE at any time
 - ◆ To comply with the 30% target for residential buildings, states that adopt California 2009 Title 24 code within 2 years of enactment of ACES shall be considered compliant for that period

STATE ENFORCEMENT

- ◆ **Within 2 years of state certification to DOE, state shall certify they have either:**
 - ◆ Achieved compliance with state codes accepted by DOE or the national building code, OR
 - ◆ Made significant progress towards compliance for any certification submitted within 7 years of enactment of ACES
- ◆ **Compliance:**
 - ◆ Meeting requirements above in at least 90% of new and substantially renovated building space
 - ◆ State shall provide documentation based on independent inspections of a random sample of applicable new and substantially renovated buildings or some other accurate alternative method

ACES: BUILDING ENERGY EFFICIENCY PROVISIONS

◆ Significant Progress:

- ◆ At least 50% of new and substantially renovated building space meets the above requirements;
 - ◆ The state has developed a plan, including for hiring enforcement staff, providing training, providing manuals and checklists, and instituting enforcement programs, designed to achieve full compliance within 5 years after the date of the adoption of the code;
 - ◆ The state is taking significant, timely, and measurable action to implement that plan;
 - ◆ The state has not reduced its expenditures for code enforcement
- ◆ Within 90 days of state certification, DOE shall determine whether the state has achieved compliance or made significant progress towards meeting the above requirements (in states determined out of compliance, local governments may still meet all certification requirements and be considered in compliance)
- ◆ **Noncompliance** – until compliance is regained, states will be ineligible to receive:
- ◆ *Emissions allowances*, from an amount equal to 0.5% of the allowances received by each state under ACES, of which this amount received is divided as:
 - ◆ One-fifth in an equal amount to each of the 50 states and United States territories.
 - ◆ Two-fifths is a function of the relative energy use in all buildings in each state in the most recent year for which data is available.
 - ◆ Two-fifths based on the number of building construction starts recorded in each state, the number of new building permits applied for in each state, or other relevant available data indicating building activity
 - ◆ *Federal funding* in excess of that state's share of \$125 million each year as determined by Energy Conservation and Protection Act (ECPA) formula
 - ◆ For the *subsequent years* a state is out of compliance, it shall be ineligible for the following percentage of additional funding: 1st year—25%, 2nd year—50%, 3rd year—75%, 4th and subsequent years—100%

FEDERAL ENFORCEMENT

- ◆ Where a state fails and local governments in that state also fail to enforce the applicable state or national energy efficiency building codes, DOE shall establish a building code enforcement capacity within 2 years of enactment of ACES
- ◆ Such capacity shall be designed to achieve 90% compliance with the state's code within 1 year after DOE determines the state is out of compliance
- ◆ DOE may collect reasonable inspection fees to cover these costs
- ◆ DOE shall assess civil penalties for violations by individuals over which U.S. district courts shall have jurisdiction
- ◆ An owner or builder of a building who knowingly occupies, permits occupancy of, or conveys the building if is not in compliance with the above requirements shall be subject to these violations. In the event a building constructed out of compliance with the applicable code has been conveyed by a knowing builder or knowing seller to an unknowing purchaser, the builder or seller shall be the violator.
- ◆ Each day of unlawful occupancy shall be considered a separate violation