

Collier Center  
201 East Washington Street  
Suite 1600  
Phoenix, AZ 85004-2382  
Tel 602.257.5200  
Fax 602.257.5299  
steptoe.com

## **What a Federal Greenhouse Gas Cap and Trade Program Might Look Like: A Summary of The Lieberman/Warner Bill - America's Climate Security Act of 2007 (S. 2191)**

By James G. Derouin  
Fredric D. Bellamy  
Mark E. Freeze<sup>1</sup>

On October 18, 2007, Senators Lieberman and Warner introduced America's Climate Security Act of 2007 (S. 2191) (ACSA). The co-sponsors of the Bill are Republican Senators Coleman, Dole and Collins, and Democratic Senators Harkin, Cardin, Casey and Klobuchar. Even before it was formally introduced, the Bill was widely considered the lead Senate proposal for regulating greenhouse gas emissions. On November 1, 2007, the bill was approved by a 4-3 vote of the Senate Environment and Public Works Subcommittee on Private Sector and Consumer Solutions to Global Warming. This vote marks the first time that a bill regulating greenhouse gas emissions has been approved by a committee or subcommittee in Congress.

The Bill now moves to the full Senate Environment and Public Works Committee. Senator Boxer, the chair of the full Committee, plans to hold a Committee hearing on the Bill on November 8, 2007, and hopes to schedule a full Committee vote before December 3, 2007. This paper provides a summary of the provisions of ACSA. Although short term prospects for passage are unclear, a consideration of the provisions of the Bill could provide some insight into what a potential federal program regulating greenhouse gas emissions might look like.

### **I. Capping Greenhouse Gas Emissions.**

#### **A. Regulated Facilities.**

ACSA regulates six greenhouse gases: carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, and perfluorocarbons.<sup>2</sup> It refers to all of these greenhouse gases in terms of Carbon Dioxide Equivalents, which is defined as the quantity of greenhouse gas that makes the same contribution to global warming as one metric ton of carbon dioxide.<sup>3</sup>

Entities regulated under the cap and trade provisions of ACSA are called "Covered Facilities." The four categories of Covered Facilities are: (1) facilities in the electric power generating sector with fossil fuel fired generating units that emit more than 10,000 carbon dioxide equivalents of greenhouse gas a year; (2) facilities in the industrial sector that emit more than 10,000 carbon dioxide equivalents of greenhouse gas a year; (3) any facility that in a year produces or imports petroleum or coal-based transportation fuel, the use of which would emit more than

10,000 carbon dioxide equivalents of greenhouse gas; and (4) any facility that in a year produces or imports nonfuel chemicals the use of which would emit more than 10,000 carbon dioxide equivalents of greenhouse gas.<sup>4</sup>

### **B. Reporting Requirements.**

ACSA directs EPA to establish a Federal Greenhouse Gas Registry.<sup>5</sup> “Affected Facilities” are required to submit reports to the Registry concerning their greenhouse gas emissions.<sup>6</sup> An Affected Facility is defined to include Covered Facilities. It also includes any other facility that emits a greenhouse gas that EPA decides to include.<sup>7</sup> In addition, EPA may also elect to include vehicle fleets with emissions of more than 10,000 carbon dioxide equivalents of greenhouse gas per year.<sup>8</sup> The term Affected Facility expressly does not include a facility that (1) is not a Covered Facility; (2) is owned or operated by a small business; and (3) emits fewer than 10,000 carbon dioxide equivalents per year.<sup>9</sup>

An Affected Facility must submit emissions data for 2004 through 2007 by March 31, 2009.<sup>10</sup> For 2008 and thereafter, each Affected Facility must submit quarterly emissions data.<sup>11</sup> Before including an emissions report in the Registry, the EPA must verify the completeness and accuracy of the report.<sup>12</sup> EPA may use the services of a third party to verify reports.<sup>13</sup> The EPA must establish regulations concerning methods to ensure the accuracy, completeness, consistency, and transparency of data submitted to the Registry.<sup>14</sup> In developing regulations, the EPA is to consider the work done by the Climate Registry.<sup>15</sup> Any entity that violates the reporting requirements is subject to a civil penalty of not more than \$25,000 per day per violation.<sup>16</sup>

### **C. The Requirement to Submit Allowances to Cover Emissions.**

Shortly after the end of each year, each Covered Facility must submit to the EPA one Emission Allowance for each carbon dioxide equivalent that was emitted by that facility during the preceding year.<sup>17</sup> Producers and importers of transportation fuel must submit one Emission Allowance for each carbon dioxide equivalent that will be emitted upon use of the fuel.<sup>18</sup> Similarly, producers and importers of non-fuel chemicals must submit one Emission Allowance for each carbon dioxide equivalent that will be emitted upon use of the chemical.<sup>19</sup>

Alternatively, as explained later, a Covered Facility may satisfy at least a portion of its requirement by submitting Domestic Offset Allowances or International Allowances.<sup>20</sup> An Covered Facility that fails to submit the required Emission Allowances will be subject to a civil penalty in an amount determined by multiplying the number of deficient Emission Allowances by the greater of three times the market value of one Emission Allowance or \$200.<sup>21</sup> In addition, the Covered Facility is required to offset the excess emissions by an equal quantity in tons during the following calendar year, or such longer period as EPA may prescribe.<sup>22</sup>

### **D. The Limitation of the Number of Allowances Available.**

ACSA establishes the total number of Emission Allowances for each year between 2012 and 2050.<sup>23</sup> As explained later herein, Covered Facilities will obtain allowances by a variety of methods, including allocation and auction. The total number of Emission Allowances established

for 2012 is 5,200 million.<sup>24</sup> This amount decreases each year. By 2050, the amount decreases to 1,560 million.<sup>25</sup> This represents a decrease of 70% from 2012. Each Emission Allowance will be assigned a unique identification number. When a Covered Facility submits an Emission Allowance to cover its emissions, that Emission Allowance is retired.<sup>26</sup> ACSA further provides that an Emission Allowance is not a property right, and nothing in ACSA or any other provision of law limits the right of the United States to terminate or limit an Emission Allowance.<sup>27</sup>

## **II. Managing and Containing Costs Efficiently.**

### **A. Buying, Selling, Banking and Borrowing Emission Allowances.**

Emission Allowances may be sold, transferred, retired, or submitted to EPA to cover emissions.<sup>28</sup> The privilege of holding, purchasing, selling and retiring Emission Allowances is not limited to Covered Facilities.<sup>29</sup> For each transfer of an Emission Allowance, there must be written certification of the transfer submitted to the EPA.<sup>30</sup> Emission Allowances may be transferred prior to the issuance of the allowance.<sup>31</sup> In such a situation, the allowances transferred will be deducted from the amount of Emission Allowances that would otherwise be distributed to the transferor, and added to the allowances distributed to the transferee.<sup>32</sup> Emission Allowances do not expire by the passage of time, and may be banked for submission in future years.<sup>33</sup> In addition, a Covered Facility may borrow Emission Allowances from up to five years in the future in order to satisfy up to 15% of its current year requirement.<sup>34</sup> These borrowed Emission Allowances must be paid back to the EPA with 10% interest.<sup>35</sup>

### **B. Domestic Offset Allowances.**

A Covered Facility may satisfy up to 15% of its current year requirement by submitting Domestic Offset Allowances.<sup>36</sup> Domestic Offset Allowances are generated by EPA approved agricultural, forestry, land use and other projects undertaken to reduce or sequester emissions of greenhouse gases.<sup>37</sup> The allowances are initially awarded to the project developer, and can then be sold.<sup>38</sup> Examples of such projects include conversion of cropland to rangeland, reduction of nitrogen fertilizer use, afforestation/reforestation, and methane capture at nonagricultural facilities.<sup>39</sup> In calculating the number of Domestic Offset Allowances awarded, EPA will exclude those emission reductions that would have occurred even absent the Domestic Offset program.<sup>40</sup> EPA will also discount the number of allowances awarded to account for leakage and measurement uncertainty.<sup>41</sup> In addition, EPA will exclude activities that undermine the purpose of the program, such as the clearing of land in anticipation of offset project initiation.<sup>42</sup>

In order to claim offset allowances, the project developer must annually submit to EPA a verification report, prepared by an accredited verifier.<sup>43</sup> If there has been a reversal in emissions reduction or sequestration, then a reversal certification must be submitted.<sup>44</sup> The EPA will then invalidate the previously issued Domestic Offset Allowances represented by the reversal, and the Covered Facility must submit additional allowances to make up the difference.<sup>45</sup> EPA may approve projects for the issuance of Domestic Offset Allowances undertaken pursuant to other federal, state or private programs and that are already in existence at the time of the promulgation of regulations for the ACSA Domestic Offset program if the EPA determines that the projects satisfy the requirements of the ACSA Domestic Offset program.<sup>46</sup>

### **C. International Credits.**

A Covered Facility may satisfy up to 15% of its current year requirement to submit Emission Allowances by submitting International Credits.<sup>47</sup> International Credits are emission allowances obtained on an EPA approved foreign greenhouse gas emissions trading market.<sup>48</sup> In order to be approved by EPA, the International Credit must have been issued by a foreign country pursuant to a governmental program that imposes mandatory absolute tonnage limits on greenhouse gas emissions pursuant to protocols adopted in accordance with the United Nations Framework Convention on Climate Change.<sup>49</sup> The foreign government's program must also be of comparable stringency to the program established by OCSA.<sup>50</sup> A Covered Facility submitting an International Credit must certify that the International Credit has not been retired from use in the registry of the applicable foreign country.<sup>51</sup>

### **D. Carbon Market Efficiency Board.**

The Bill establishes a Carbon Market Efficiency Board made up of seven members appointed by the President with the advice and consent of the Senate.<sup>52</sup> The purpose of the Board is to ensure a stable, functioning and efficient market in Emission Allowances, and to ensure that the imposition of limits on greenhouse gas emissions will not significantly harm the economy.<sup>53</sup> The Board has the power to undertake the following cost relief measures: (1) increase the quantity of Emission Allowances that Covered Facilities may borrow; (2) expand the time period that a Covered Facility has to pay back borrowed Emission Allowances; (3) lower the interest rate for borrowed Emission Allowances; (4) increase the quantity of International Credits that can be used by a Covered Facility to meet the annual submission requirements; (5) increase the quantity of Domestic Offset Allowances that may be used by a Covered Facility to meet the annual submission requirements; and (6) expand the total quantity of Emission Allowances made available to all Covered Facilities by borrowing Emission Allowances from future years.<sup>54</sup>

## **III. Allocating and Distributing Allowances.**

### **A. Allocations to the Climate Change Credit Corporation.**

The Climate Change Credit Corporation is a private non-profit corporation created by ACSA.<sup>55</sup> Its five member board is appointed by the President with the advice and consent of the Senate.<sup>56</sup> Within six months after enactment, the EPA is to allocate to the Climate Change Credit Corporation the following: 6% of the Emissions Allowances established for 2012, 4% of the allowances established for 2013, and 2% established for 2014.<sup>57</sup> As set forth later herein, the Corporation will then engage in an early auction of these allowances. Beginning in 2012, and continuing annually thereafter through 2050, the EPA is to allocate to the Corporation a percentage of Emission Allowances.<sup>58</sup> The percentage for 2012 is 18%.<sup>59</sup> This amount increases every year until 2036, when it reaches 73%.<sup>60</sup> The percentage stays at 73% through 2050.<sup>61</sup>

## **B. Allocations for Early Reduction Actions.**

In addition, within two years of enactment, the EPA is to allocate Emission Allowances to those Covered Facilities that made verified and credible reductions of greenhouse gas emissions before the enactment of ACSA and since 1994.<sup>62</sup> The amount allocated for such early reductions is as follows: 5% of the Emission Allowances established for 2012, 4% of the allowances established for 2013, 3% of the allowances established for 2014, 2% of the allowances established for 2015, and 1% of the allowances established for 2016.<sup>63</sup>

## **C. Allocations to the States.**

Nine percent of Emission Allowances are allocated annually to the states. Of this, 5% is to be allocated among the states as follows: (1) 1/3 to the individual states based on the proportion that state spending for the federal low income energy assistance program bears to such spending for all states; (2) 1/3 to the individual states based on the proportion that the population of the state bears to the population of all states; and (3) 1/3 to the individual states based on the proportion that the state's carbon dioxide emissions (assuming that all coal mined, natural gas processed and petroleum refined in the state is combusted) bears to the emissions of all states.<sup>64</sup> In addition, 2% is to be allocated to states that have adopted certain energy saving regulations.<sup>65</sup> Finally, 2% is to be allocated to states that have adopted state greenhouse emission reduction targets that are more stringent than the nationwide targets, and that have imposed on Covered Facilities within the state aggregate greenhouse gas limitations more stringent than those imposed on Covered Facilities under the national program.<sup>66</sup>

Each year, the state must either retire or use the proceeds of at least 90% of the allocated allowances in one or more of the following ways: (1) to mitigate impacts on low-income energy consumers; (2) to promote energy efficiency; (3) to promote investment in non-emitting electricity generating technology; (4) to improve public transportation; (5) to encourage advances in energy technology; (6) to address the impacts of climate change; (7) to mitigate obstacles to investment by new entrants in electricity generation markets and energy-intensive manufacturing sectors; (8) to address impacts of climate change policy; (9) to mitigate impacts on energy-intensive industries in internationally competitive markets; (10) to reduce hazardous fuels, and to prevent and suppress wild land fire; and (11) to fund water projects that are consistent with the sustainable use of water resources.<sup>67</sup>

## **D. Allocations for Electricity Consumers.**

Each year, 10% of the Emission Allowances are allocated to load serving entities.<sup>68</sup> A load serving entity is a public or private entity that has a legal, regulatory or contractual obligation to deliver electricity to retail consumers; and whose rates and costs are, except in the case of registered electric cooperatives, regulated by a state agency, regulatory commission, municipality, or public utility district.<sup>69</sup> The allowances will be allocated among load serving entities based on the proportion that the quantity of electricity delivered by the load serving entity (adjusted upward to reflect electricity not delivered as a result of consumer energy efficiency programs implemented by the load serving entity) bears to the total quantity of electricity delivered by all

load serving entities.<sup>70</sup> Each entity accepting allowances under this allocation must sell all of the allowances at market price and use the proceeds to mitigate economic impacts on low and middle income energy consumers and to promote energy efficiency on the part of energy consumers.<sup>71</sup>

#### **E. Allocations to Carbon Capture and Sequestration Projects.**

ACSA requires the EPA to allocate 3,932,160 Emission Allowances to a Bonus Allowance Account.<sup>72</sup> This represents 4% of Emission Allowances established for years 2012 through 2035.<sup>73</sup> These Emission Allowances will in turn be allocated to qualifying carbon capture and sequestration projects from 2012 through 2039.<sup>74</sup> The number of Emission Allowances allocated to a individual project each year is determined by multiplying the number of metric tons of carbon dioxide geologically sequestered by the project times the bonus allowance rate for that year.<sup>75</sup> The bonus allowance rate for 2012 through 2017 is 4.5.<sup>76</sup> The rate then declines for subsequent years.<sup>77</sup> By 2032, the bonus allowance rate is .5.<sup>78</sup> To be eligible, a project must (1) comply with the requirements established by the EPA, including a requirement for a minimum 85% capture rate for emissions; (2) sequester in a geological formation that has been permitted for that purpose pursuant to the Safe Drinking Water Act; and (3) have begun operations between January 1, 2008 and December 31, 2035.<sup>79</sup> A project may only receive allowances for a ten year period.<sup>80</sup> When the Bonus Allowance Account is exhausted, then the program will be discontinued.<sup>81</sup>

#### **F. Allocations to Agriculture and Forestry Projects.**

Each year from 2012 through 2050, EPA is to allocate 5% of Emission Allowances for use in reducing greenhouse gas emissions, and increasing greenhouse gas sequestration, from the agriculture and forestry sectors.<sup>82</sup> The Department of Agriculture is to establish a program for the distribution of these allowances to entities that carry out sequestration projects on agricultural and forest land.<sup>83</sup> In addition, each year EPA is to allocate 3% of Emission Allowances for use in carrying out forest carbon activities, such as reducing deforestation and increasing reforestation, in countries other than the United States.<sup>84</sup> EPA, in consultation with the Departments of State, Interior and Agriculture, is directed to promulgate eligibility regulations for international forest carbon projects.<sup>85</sup> The regulations must provide that, in order to receive allowances, the emission reductions or sequestrations must be real, permanent, additional, and verifiable, with reliable measuring and monitoring and appropriate accounting for leakage.<sup>86</sup>

#### **G. Allocations to Covered Facilities.**

ACSA provides for a certain percentage of Emission Allowances to be allocated annually from 2012 through 2035 to Covered Facilities in the electric power sector.<sup>87</sup> That percentage declines from 20% in 2012 to 1% in 2035.<sup>88</sup> Within the Emission Allowances allocated to the electric power sector, EPA is directed to set aside a quantity of Emission Allowances for new entrants and a quantity of Emission Allowances for rural electric cooperatives.<sup>89</sup> After subtracting the amount set aside for these two purposes, the number of Emission Allowances allocated to each incumbent Covered Facility in the electric power sector is obtained by multiplying the quantity of Emission Allowances available for distribution by the quotient obtained by dividing the annual average quantity of carbon dioxide equivalents emitted by the facility during the three years

preceding the enactment of ACSA, by the annual average quantity of carbon dioxide equivalents emitted by all covered facilities during those three years.<sup>90</sup>

ACSA also provides for the annual allocation from 2012 through 2035 of a percentage of Emission Allowances to Covered Facilities in the industrial sector.<sup>91</sup> That percentage declines from 20% in 2012 to 1% in 2035.<sup>92</sup> Within the Emission Allowances allocated to the industrial sector, EPA is directed to set aside a quantity of Emission Allowances for allocation to new entrants in the sector.<sup>93</sup> The number of Emission Allowances allocated to each incumbent Covered Facility within the industrial sector is obtained by multiplying the Emission Allowances available for distribution after subtracting the amount set aside for new entrants by the quotient obtained by dividing the annual average quantity of carbon dioxide equivalents emitted by the facility during the three years preceding the enactment of ACSA, by the annual average quantity of carbon dioxide equivalents emitted by all covered facilities during those three years.<sup>94</sup>

#### **IV. Auctions and Uses of Auction Proceeds.**

##### **A. Early Auction and Annual Auctions.**

ACSA creates the following funds: (1) the Energy Assistance Fund; (2) the Climate Change Worker Training Fund; (3) the Adaptation Fund; and (4) the Climate Change and National Security Fund.<sup>95</sup> As set forth earlier herein, the Climate Change Credit Corporation is allocated annually a portion of the Emission Allowances. It is also given an early allocation of Emission Allowances. The Corporation is directed to auction all of the Emission Allowances allocated to it in the early allocation and use all of the proceeds from that early auction to carry out energy technology programs.<sup>96</sup> The Corporation is also directed to auction off all of its annual allocations of Emission Allowances. It is directed to use 55% of the proceeds annually from these auctions to carry out energy technology programs.<sup>97</sup> It is to annually deposit the remaining proceeds as follows: 20% to the Energy Assistance Fund, 5% to the Climate Change Worker Training Fund, and 20% to the Adaptation Fund.<sup>98</sup>

##### **B. Auction Proceeds For Energy Technology Programs.**

With regard to the energy technology programs, ACSA directs that not more than 45% of the funds are to be used to provide financial incentives for (1) the production of electricity from new zero- or low-carbon generation; and (2) the manufacture of high efficiency consumer products.<sup>99</sup> Not more than 28% of the proceeds are to be used to support demonstration projects using advanced coal generation technology, to provide financial incentives to facilitate deployment of advanced coal generation technologies, and to support large-scale geological carbon storage generation projects.<sup>100</sup> Not more than 7% of the proceeds are to be used to provide deployment incentives to encourage a variety of projects to produce transportation fuels from cellulosic biomass.<sup>101</sup> Finally, not more than 20% of the proceeds are to be used to fund an advanced technology vehicles manufacturing incentives program that provides up to 30% of the costs of reequipping or expanding an existing manufacturing facility to produce advanced technology vehicles or component parts.<sup>102</sup>

### **C. Auction Proceeds For Low-Income Energy Consumers, Displaced Worker Training, and Climate Change Adaptation.**

All funds deposited in the Energy Assistance Fund are to be made available as follows: (1) 50% to the low income home energy assistance program; (2) 25% to the weatherization assistance program for low-income persons; and (3) 25% to a program to provide financial assistance to promote the availability of reasonably priced electricity in off-grid rural regions where electricity prices exceed 150% of the national average.<sup>103</sup> The funds deposited into the Climate Change Worker Training Fund are to be used to provide grants to the states for funding state programs that provide job training and transition assistance to displaced workers.<sup>104</sup> Monies deposited in the Adaptation Fund are to be used to carry out activities that assist fish and wildlife, fish and wildlife habitat, plants, and associated ecological processes in adapting to and surviving the impacts of climate change.<sup>105</sup>

### **D. Auction Proceeds For National Security.**

ACSA creates the Climate Change and National Security Council, made up of the Secretary of State, the EPA Administrator, the Secretary of Defense, and the Director of National Intelligence.<sup>106</sup> The Council is directed to submit annual reports to the President and designated committees of the House and Senate that describe the following: (1) the extent to which climate change may threaten, cause or exacerbate political instability or international conflict in the world; (2) the impacts that any destabilizing conditions caused by climate change may have on the national security of the United States; and (3) any recommendations on whether it is necessary to enhance national security by funding programs that the Council determines would assist in avoiding the politically destabilizing impacts of climate change in volatile regions of the world.<sup>107</sup> If the President determines based on the report set forth above that funds should be made available to carry out the recommendations of the Council, then the Climate Change Credit Corporation shall deposit 5% of the proceeds from its auctions for that calendar year into the Climate Change and National Security Fund, and the President shall use those funds to implement the recommendations.<sup>108</sup>

### **V. International Reserve Allowance Program.**

The EPA is directed to establish a program pursuant to which International Reserve Allowances are offered for sale to importers of goods into the United States.<sup>109</sup> The EPA is to establish a methodology to determine the price of the allowances and establish rules for the sale, exchange, purchase, transfer and banking of allowances.<sup>110</sup> Beginning January 1, 2020, United States importers of Covered Goods from non-de minimis countries that have not taken comparable efforts to limit greenhouse gas emissions (as determined by the President) must, as a condition of importation, purchase sufficient International Reserve Allowances for the Covered Goods being imported.<sup>111</sup> The proceeds from the sale of International Reserve Allowances are to be used to mitigate the negative impacts of global climate change on disadvantaged communities in other countries.<sup>112</sup>

A Covered Good is defined as a good that (1) is a Primary Product; (2) generates in manufacture a substantial quantity of greenhouse gas emissions; and (3) is closely related to a good the cost of production of which in the United States is affected by a requirement of ACSA.<sup>113</sup> A Primary Product is defined as (1) iron, steel, aluminum, cement, bulk glass, or paper; or (2) any other manufactured product that is sold in bulk for purposes of further manufacture, and that generates in manufacture greenhouse gas emissions that are comparable to emissions generated in the manufacture of products by Covered Facilities in the industrial sector.<sup>114</sup> Covered Goods from a foreign country may be excluded from the requirement regarding the purchase of allowances where the President has determined that the United Nations has identified the country as among the least-developed of developing countries.<sup>115</sup> The EPA is directed to develop a rule regarding the number of International Reserve Allowances that will be required per unit of Covered Goods imported.<sup>116</sup> Finally, ACSA provides that EPA shall adjust the requirements of the program as needed to ensure that the United States complies with all international agreements.<sup>117</sup>

## **VI. Framework For Geological Sequestration of Carbon Dioxide.**

ACSA amends the Safe Drinking Water Act to direct EPA to promulgate regulations for permitting commercial-scale injection of carbon dioxide for purposes of geological sequestration to address climate change.<sup>118</sup> The regulations are to include provisions (1) for monitoring and controlling long-term storage; (2) for avoiding release of carbon dioxide to the atmosphere; (3) ensuring protection of underground sources of drinking water, human health, and the environment; and (4) relating to long-term liability associated with geological sequestration.<sup>119</sup> The Secretary of the Interior is directed to conduct an national assessment of the capacity for carbon dioxide storage in the United States.<sup>120</sup> The Secretary of Energy is directed to conduct a study to assess the feasibility of the construction of pipelines to be used for the transportation of carbon dioxide for sequestration or enhanced oil recovery, and the feasibility of the construction of geological carbon dioxide sequestration facilities.<sup>121</sup> Finally, the EPA must establish a task force to conduct a study of the legal framework, environmental and safety considerations, and cost implications of potential federal assumption of liability with respect to closed geological storage sites.<sup>122</sup>

## **VII. Miscellaneous Provisions.**

ACSA amends the Energy Conservation and Reduction Act to provide efficiency standards for residential boilers, and to authorize regional efficiency standards for space heating and air conditioning products.<sup>123</sup> ACSA also amends the Energy Conservation and Reduction Act to provide for updating state building energy efficiency codes to achieve greater energy efficiency.<sup>124</sup> ACSA provides for reviews conducted by the National Academy of Sciences regarding, among other things, the extent to which the goals of ACSA are being achieved, additional measures that should be taken, and the status of technologies to reduce, sequester, or avoid greenhouse gas emissions.<sup>125</sup> ACSA provides for reviews regarding the status of reducing greenhouse gas emissions from the transportation sector.<sup>126</sup> It also provides for the development of a climate change adaptation plan for the United States.<sup>127</sup>

The President may temporarily waive the requirements of ACSA in the event of a national security emergency.<sup>128</sup> This waiver is subject to judicial review.<sup>129</sup> Further, ACSA requires the Securities and Exchange Commission to issue regulations in accordance with the Securities Exchange Act of 1934 directing each issuer of securities under that Act to inform securities investors of material risks relating to: (1) the financial exposure of the issuer because of the net global warming pollution emissions of the issuer; and (2) the potential economic impacts of global warming on the interests of the issuer.<sup>130</sup> In addition, ACSA provides that each of its provisions relating to the mandatory duties of the EPA are fully enforceable pursuant to the citizen suit provisions of the Clean Air Act.<sup>131</sup> Finally, ACSA provides that nothing in ACSA precludes or abrogates the right of any state to adopt or enforce (1) any standard cap, limitation, or prohibition relating to emissions of greenhouse gases; or (2) any requirement relating to control, abatement, or avoidance of emissions of greenhouse gases.<sup>132</sup> However, no state may adopt a standard, cap, limitation, prohibition, or requirement that is less stringent than the applicable standard, cap, limitation, prohibition, or requirement under ACSA.<sup>133</sup>

### VIII. Amendments to the Bill.

Shortly before the November 1, 2007 hearing in the Subcommittee, the bill was amended to extend its scope to cover emissions from the use of natural gas. Also, an amendment was adopted in the Subcommittee to require automobile manufacturers to produce vehicle fleets that average at least 35 miles per gallon before the industry could be eligible for the funding for advanced technology vehicles. Finally, an amendment was adopted to transfer funding for forest protection to the states.

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<sup>1</sup> James G. Derouin and Fredric D. Bellamy are partners, and Mark E. Freeze is special counsel, in the Phoenix, Arizona office of Steptoe & Johnson LLP.

<sup>2</sup> America's Climate Security Act, S. 2191, § 4(15).

<sup>3</sup> §4(5).

<sup>4</sup> § 4(7).

<sup>5</sup> § 1105.

<sup>6</sup> § 1103(a).

<sup>7</sup> § 1102(1)(A)(i),(ii).

<sup>8</sup> § 1102(1)(A)(iii).

<sup>9</sup> § 1102(1)(B).

<sup>10</sup> § 1103(d)(1).

<sup>11</sup> § 1103(d)(2).

<sup>12</sup> § 1103(c).

<sup>13</sup> § 1105(c).

<sup>14</sup> § 1104(a).

<sup>15</sup> *Id.*

<sup>16</sup> § 1106(b).

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- <sup>17</sup> § 1202(a)(1).
  - <sup>18</sup> § 1202(a)(2).
  - <sup>19</sup> § 1202(a)(3).
  - <sup>20</sup> § 1202(a).
  - <sup>21</sup> § 1203(a).
  - <sup>22</sup> § 1203(b).
  - <sup>23</sup> § 1201(d).
  - <sup>24</sup> *Id.*
  - <sup>25</sup> *Id.*
  - <sup>26</sup> § 1202(b).
  - <sup>27</sup> § 1201(c)(1),(2).
  - <sup>28</sup> § 2101.
  - <sup>29</sup> § 2102.
  - <sup>30</sup> § 2103(a).
  - <sup>31</sup> § 2103(b)(1).
  - <sup>32</sup> § 2103(b)(2).
  - <sup>33</sup> § 2201.
  - <sup>34</sup> § 2301.
  - <sup>35</sup> § 2303.
  - <sup>36</sup> § 2402(a).
  - <sup>37</sup> § 2402(b).
  - <sup>38</sup> § 2402(d),(e).
  - <sup>39</sup> § 2403(b).
  - <sup>40</sup> § 2405.
  - <sup>41</sup> *Id.*
  - <sup>42</sup> § 2404(e).
  - <sup>43</sup> § 2405.
  - <sup>44</sup> § 2406(a).
  - <sup>45</sup> § 2406(b).
  - <sup>46</sup> § 2408(b).
  - <sup>47</sup> § 2501.
  - <sup>48</sup> *Id.*
  - <sup>49</sup> § 2502(b)(1).
  - <sup>50</sup> § 2502(b)(2).
  - <sup>51</sup> § 2503.

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<sup>52</sup> § 2602.

<sup>53</sup> § 2601.

<sup>54</sup> § 2604(a)(1)(A)-(F).

<sup>55</sup> § 4201.

<sup>56</sup> § 4203.

<sup>57</sup> § 3101.

<sup>58</sup> § 3201.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> § 3301.

<sup>63</sup> *Id.*

<sup>64</sup> § 3403(b).

<sup>65</sup> § 3401.

<sup>66</sup> § 3402.

<sup>67</sup> § 3403(c)(1).

<sup>68</sup> § 3501.

<sup>69</sup> § 4(18).

<sup>70</sup> § 3502.

<sup>71</sup> § 3503.

<sup>72</sup> § 3601(b).

<sup>73</sup> § 3601(a)(2).

<sup>74</sup> § 3602.

<sup>75</sup> § 3603.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> § 3602(1)-(3).

<sup>80</sup> § 3604.

<sup>81</sup> § 3605.

<sup>82</sup> § 3701.

<sup>83</sup> § 3703.

<sup>84</sup> §§ 3802, 3803.

<sup>85</sup> § 3804.

<sup>86</sup> § 3804(b).

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<sup>87</sup> § 3901.

<sup>88</sup> *Id.*

<sup>89</sup> § 3903(a),(b).

<sup>90</sup> § 3903(c).

<sup>91</sup> § 3901.

<sup>92</sup> *Id.*

<sup>93</sup> § 3904(a).

<sup>94</sup> § 3904(c).

<sup>95</sup> § 4101.

<sup>96</sup> § 4301(c).

<sup>97</sup> § 4302(b)(1).

<sup>98</sup> § 4302(b)(2).

<sup>99</sup> §§ 4401(1), 4402.

<sup>100</sup> §§ 4401(2)(A), 4403.

<sup>101</sup> §§ 4401(2)(B), 4404.

<sup>102</sup> §§ 4401(3), 4405.

<sup>103</sup> § 4501.

<sup>104</sup> §§ 4504, 4605.

<sup>105</sup> § 4702.

<sup>106</sup> § 4801(a),(b).

<sup>107</sup> § 4801(c).

<sup>108</sup> § 4802.

<sup>109</sup> § 6006(a)(1).

<sup>110</sup> § 6006(a)(3),(5).

<sup>111</sup> § 6006(b),(c).

<sup>112</sup> § 6006(a)(7).

<sup>113</sup> § 6001(5).

<sup>114</sup> § 6001(10).

<sup>115</sup> § 6006(c)(4)(B)(ii).

<sup>116</sup> § 6006(d).

<sup>117</sup> § 6006(g).

<sup>118</sup> § 8001(a)(3).

<sup>119</sup> *Id.*

<sup>120</sup> § 8002(f).

<sup>121</sup> § 8003(a).

<sup>122</sup> § 8004(a).

<sup>123</sup> §§ 5101, 5102.

<sup>124</sup> § 5201.

<sup>125</sup> § 7001.

<sup>126</sup> § 7002.

<sup>127</sup> § 7003.

<sup>128</sup> § 9001(a).

<sup>129</sup> § 9003(c).

<sup>130</sup> § 9002(a).

<sup>131</sup> § 9003(b).

<sup>132</sup> § 9004(a).

<sup>133</sup> § 9004(b).