

NAR Information Pack

The American Clean Energy and Security Act



National Association of REALTORS® Government Affairs Division
500 New Jersey Avenue, NW, Washington, DC, 20001

The American Clean Energy and Security Act

Page 1

NAR Legislative Analysis

Page 2

NAR Myths and Facts

Page 4

NAR Progression Chart

Page 5

NAR Summary of Green Act Provisions

Additional Resources:

An NAR summary of climate issues, which summarizes NAR policy, may be accessed on Realtor.org.

<http://www.realtor.org/fedistrk.nsf/c2c6e17e27e92119852572f8005cd953/4c238a3be8220682852573d4006f1dfc?OpenDocument>

[PDF of The American Clean Energy and Security Act](#)

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2454eh.txt.pdf

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NAR Legislative Analysis

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Houses Passes Climate Bill with Energy Labeling Exemptions

The U.S. House of Representatives approved H.R. 2454, the American Clean Energy and Security Act by Reps. Waxman (D-CA) and Markey (D-MA). Following NAR's long-standing policy to only take a position on legislation, or provisions within legislation, that have a direct affect on real estate NAR worked with our Congressional allies to strip the Energy Bill of provisions that would have adversely affected our industry.

After multiple consultations with the NAR Climate Presidential Advisory Group, the NAR Land Use, Property Rights and Environment Committee, and state associations who had dealt with energy audit legislation at the state level, the Land Use, Property Rights and Environment Committee directed NAR staff to concentrate on the real estate provisions in the bill. As a result, NAR issued calls for action and made this a talking point for Capitol Hill visits during its recent Midyear meeting.

Overall, Realtors succeeded in making a number of positive changes affecting the real estate provisions of the bill. The House-approved bill:

- Does ***not*** create a federal energy audit requirement for real property;
- Exempts existing homes and buildings from any federal guidelines for new construction energy efficiency information labels.
- Prohibits the implementation of any labeling during a sales transaction.
- Leaves the decision to states as to whether to require energy audits, disclosures, etc.
- Provides property owners with significant financial incentives, matching grants and tools to make property improvements and reduce their energy bills;
- Prohibits the Environmental Protection Agency from regulating residential and commercial buildings under the Clean Air Act;
- Eliminated an early proposal to allow citizens to sue over minor climate risks under the Clean Air Act; and
- Establishes green building incentives for HUD housing, including a loan program for renewable energy, block grants and credit for upgrades in mortgage underwriting.

While H.R. 2454 includes many positive changes, NAR will remain vigilant to address provisions that impact real estate and to make necessary changes to address unresolved real estate issues, such as the bill's building energy code targets. The Senate must still pass its version of an energy and climate bill. There would be a House-Senate conference committee to reconcile differences between the House and Senate bills. The timing for a vote in the Senate is not clear as the Environment and Public Works Committee still must develop the climate provisions to "cap and trade" carbon emissions. The Senate Energy and Natural Resources Committee has approved energy provisions that are less burdensome and preserve state flexibility to develop and enforce building codes. While the bill as approved by the House is now significantly less onerous than the version that was introduced, NAR will continue to monitor closely real estate issues as the legislative process continues.

An NAR summary of climate issues, which summarizes NAR policy, may be accessed on Realtor.org. Here is the link:

<http://www.realtor.org/fedistrk.nsf/c2c6e17e27e92119852572f8005cd953/4c238a3be8220682852573d4006f1dfc?OpenDocument>

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NAR Myths and Facts

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On June 26, the House of Representative approved H.R. 2454, the American Clean Energy and Security Act. Since then, there have been many reports about the bill and NAR's position that are based on incomplete information. Here are the facts:

Claim: "NAR supports a "Cap and Tax" bill"

Fact: NAR takes a position on legislation, or provisions within legislation, that have a direct affect on real estate. Working with our Congressional allies, NAR stripped the Energy Bill of provisions that would have adversely affected our industry. At the direction of the NAR Board of Directors and Land Use, Property Rights and Environment Committee and the Climate Change Presidential Advisory Group, NAR concentrated on the real estate provisions in the bill. NAR was successful in getting harmful federal energy audit requirements and point-of sale triggers dropped from the bill.

As passed, the bill:

- Does not create a federal energy audit requirement for real property;
- Exempts existing homes and buildings from any federal guidelines for new construction energy labeling.
- Leaves the decision to state government whether to pass a law and label, but specifically prohibits any labeling during a sales transaction.
- Prohibits the Environmental Protection Agency from regulating carbon emissions from residential and commercial buildings under the Clean Air Act;
- No longer includes provisions to bolster a private right of action under the Clean Air Act that would have allowed citizens to halt construction over minor risks – whether real or imagined;
- Offers property owners with matching grants and diagnostic tools to make property improvements that saves energy; and
- Provides green building financial incentives for HUD housing, including a loans, block grants and credit in underwriting for energy improvements.

Claim: "The bill mandates energy audits and labeling before any home in America is sold."

Fact: The bill does not create a federal energy audit or labeling requirement. As introduced, the original bill would have required energy audits and labeling at the time of sale. However, Realtors succeeded in making many positive changes before the bill passed. Many published reports are not based on the version of the bill that was considered by the House. As approved, the bill:

- Does not create energy audit requirement for real property at time of sale.
- Exempts existing homes, multifamily and commercial buildings from any federal energy labeling guidelines such as the existing federal Energy Star label program (section 204(m)), and
- Leaves the decision entirely to state governments whether to pass a law to require labels, but expressly prohibits labeling during a transaction (Section 204(h)).

Claim: "The bill federalizes building codes."

Fact: The bill would create a national building code standard that improves upon building energy efficiency. States would be given 1 year to bring their state codes into compliance with the new national standards. If a state fails to do so, the federal government would set and enforce the state's energy codes.

Throughout the bill's development, NAR has worked as part of a broad real estate coalition to address concerns with the House bill's building-code provisions. NAR and the real estate coalition were unable to secure committee passage of amendments to limit these provisions. An amendment to strike the provisions defeated along a party line vote. NAR will redouble its efforts in the Senate where the energy committee has reported bipartisan alternative to the House's that sets more realistic energy reduction targets while preserving state and local

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authority. If and when the Senate takes up its bill and it reaches a House-Senate conference to resolve the bill differences, we will undertake the necessary efforts and activities to ensure onerous provisions are not imposed on real estate markets.

Claim: "NAR should have read the bill."

Fact: NAR reviewed the entire amendment and bill before taking a position. NAR was directly involved in the development of the 308-page amendment. The energy labeling exemption for existing real property was included on page 45. The House bill is available to the public at the Library of Congress' website: <http://thomas.loc.gov/> The real estate provisions are in Title 2 beginning on page 320.

Claim: The bill contains a new federal policy that requires residential and commercial buildings to be retrofitted to federal "green" standards prior to time of sale.

Fact: Section 202 (building retrofit program) **does not** contain point-of-sale retrofit requirements. The bill does:

- Provide states with the funding for financial incentives to property owners who **voluntarily** decide to make energy efficiency improvements.
- Provide that financial incentives may include grants, loans, loan guarantees, and/or mortgage interest rate buy-downs.
- Establish a sliding scale for incentives -- i.e., if a home owner makes improvements that result in a 10% reduction in energy consumption, the owner would be eligible for an award of \$1,000; a 20% reduction would be eligible for a \$2,000 award, etc. up to a maximum award of 50% of the retrofit cost for each building.
- Require state voluntary retrofit incentives programs that use federal funding for incentives to meet federal guidelines for certifying private contractor training, equipment and practices for energy audit/retrofit services eligible for federal funding.

Claim: No Congressional office will deny that there are mandatory point-of-sale retrofit requirements in the bill.

Fact: The real estate provisions in the energy bill represent approximately 50 pages of the 1428-page House bill. While members of Congress have been involved in the full range of policy issues involved in the bill, some staff may not be totally familiar with the details of the real estate related provisions. NAR has focused exclusively on these 50 pages, been involved in their drafting from the beginning, and has successfully advocated for significant improvements to these provisions. There are no federal energy audit or retrofit requirements at point of sale in the bill.

Claim: The GREEN Act provisions of the bill require owners of federally assisted housing to retrofit their building to energy efficient standards.

Fact: The Green Act requires the HUD Secretary to establish incentives for energy efficient programs on HUD-assisted properties. The bill also provides the Secretary discretion to incorporate energy efficient standards into HUD-assisted programs.

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PROGRESSION OF BUILDING ENERGY LABELING FROM DRAFT TO PASSAGE (H.R. 2454 § 204)

Provision	Draft Bill (Dingell; 10/7/08)	Introduced Bill (5/15/09)	Committee Report (6/5/09)	House-passed Bill (6/19/09)
Energy Labels	<p>Created federal system of labeling and ratings based on energy audits (below).</p> <p>Prescribed label content: Included ratings for each home on scale of 1 to 100.</p> <p>Provided funding to states that require labeling and disclosure at time of sale.</p> <p>Set federal standards to include labels in MLS, signage and appraisals.</p>	<p>Created federal system of labeling and rating based on Energy Star program.</p> <p>Provided funding to states that adopted a law or plans for labeling and discloses to buyers at one of several optional points, including the time of audit, retrofit, inspection, lien, <u>or</u> sale.</p>	<p>Same as introduced, but:</p> <ul style="list-style-type: none"> • Prohibited labeling at time of sale by a state labeling program; • Deletes buyer disclosure but the state “shall seek to ensure that labeled information be made accessible to the public...” 	<p>Same as committee bill, but exempts existing residential and commercial buildings.</p>
Energy Audits	<p>Imposed federal standards on audits for bill funding.</p> <p>Provided federal funding to states to provide free audit to property owner.</p> <p>Prescribed audit content: characterized energy use, specified improvements to meet Energy Star standard.</p> <p>Required that audit results be recorded with tax and property records and made available for public review.</p>	<p>(Deleted energy audits as basis for labeling but state retrofit incentive programs include an audit guideline.)</p>		

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There have been reports of the House Energy Bill's point-of-sale requirements for HUD housing, rehabs and appliances, which are not based on complete information. Here are the facts.

The bill's Fannie/Freddie provisions are limited to:

- Provides credit toward GSE housing goals for encouraging use of energy- and location-efficient mortgages.
- Adds a new duty to serve for underserved markets for energy-efficient and location-efficient mortgages.

There are however, a range of financial incentive programs to help make HUD-assisted housing more energy efficient. The bill:

- Provides for consideration of energy efficiency in underwriting and sets a goal of insuring 50,000 FHA energy efficient mortgages by the end of 2012.
- Develops a pilot program for financing energy efficient improvements in HUD-assisted housing.
- Creates block grants for energy efficient retrofits.
- Sets minimum increase in energy efficiency for a building's owner to be eligible for the HUD-assisted financial incentive programs.

It also:

- Establishes a loan fund at the Dept of Treasury for states to provide incentives owners of buildings to use renewable energy sources.
- Ensures that homeowners not connected to the electricity grid be able to obtain homeowners insurance.
- Develops a grant program to provide technical assistance for energy efficient improvements in low-income communities.
- Develops guidelines for green banking centers to inform consumers about energy efficiency financing options.
- Allows Secretary to guarantee mortgages or portions of mortgages on sustainable building elements.

While the GREEN Act provisions are incentive-, not mandate -based, there are several unresolved issues that need to be addressed in the Senate:

- Definition of HUD assistance – this could be read as including FHA insured mortgages, which was not the intent of the legislation.
- The Fannie/Freddie new duty to serve – we do not believe this is not the right time to add a duty or complicate debate over the future of GSEs.
- Training & requirements for appraisers to value energy efficiency in federally related transactions; while appraisers are already required to consider all improvements, this could be precedent setting.
- Requires energy ratings on appliances installed in manufactured homes and on homes with an FHA energy efficient mortgage, but the language is confusing and could be construed to allow ratings for all FHA loans, which is not the intent.