

What's at Stake for Local Governments in the Impending Comprehensive Energy Legislation

It is anticipated that Congress will conference on a comprehensive energy legislation in the lame-duck session this fall.

The energy bill will possibly be one of only a few pieces of legislation that may have a chance of getting to the President's desk and signed into law this year. This document highlights policy and funding provisions with regard to the comprehensive energy legislation that, if passed, will impact local governments.

As Congress is about to conference two of the most sweeping pieces of energy legislation in almost 10 years, we anticipate the conference will begin when Congress returns from summer recess in September. In the meantime, staff will be working during August to try to reach common ground on provisions in the two bills, which will not be easy, as the bills are quite disparate.

For background, both the House and Senate chambers have each passed their own versions of energy legislation – each bill, nearly 800 pages. The House bill, originally titled H.R. 8, the North American Energy Security and Infrastructure Act, was predominantly a party-line bill of 249–174 with the support of only nine Democrats. Conversely, the Senate had reached significant bipartisan agreement and passed S. 2012, the Energy Policy Modernization Act, out of its chamber with an 85-12 vote.

In early July, after several weeks of negotiations between Senate Energy and Natural Resources Committee Chairman Lisa Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA), the Senate voted in favor of going to conference with the House in an effort to reconcile the two chambers' bills. The House had previously voted to go to conference and selected its 24 Republican and 16 Democrat conferees in May; the Senate chose its four Republicans and three Democrat conferees during its vote for conference. The respective conference committees include the members listed below.

House Conferees

Republicans: Fred Upton (MI); Joe L. Barton (TX); Edward Whitfield (KY); John Shimkus (IL); Bob Latta (OH); Cathy McMorris Rodgers (WA); Pete Olson (TX); David B. McKinley (WV); Mike Pompeo (KS); Morgan Griffith (VA); Bill Johnson (OH); Bill Flores (TX); Markwayne Mullin (OK); Rob Bishop (UT); Don Young (AK); Cynthia M. Lummis (WY); Jeff Denham (CA); Bruce Westerman (AR); Lamar Smith (TX); Randy Weber (TX); K. Michael Conaway (TX); Glenn Thompson (PA); Cresent Hardy (NV); and Lee Zeldin (NY)

Democrats: Frank Pallone Jr. (NJ); Raúl Grijalva (AZ); Collin C. Peterson (MN); Eddie Bernice Johnson (TX); Peter A. DeFazio (OR); Bobby L. Rush (IL); Lois Capps (CA); Doris Matsui (CA); Kathy Castor (FL); Dave Loebsack (IA); John Sarbanes (MD); Peter Welch (VT); Ben Ray Lujan (NM); Paul Tonko (NY); Jared Huffman (CA); and Debbie Dingell (MI)

Senate Conferees

Republicans: Lisa Murkowski (AK); John Barrasso (WY); Jim Risch (ID); and John Cornyn (TX)

Democrats: Maria Cantwell (WA); Ron Wyden (OR); and Bernie Sanders (VT)

Just prior to leaving for summer recess, Congressional leaders reportedly reached an agreement to remove three bills from the upcoming the conference that had been included in the House energy package and had drawn a veto threat from President Obama:

- The Western Water and American Food Security Act (H.R. 2898), a controversial California drought relief bill
- The Resilient Federal Forests Act (H.R. 2647), which promises to “speed up environmental reviews of logging and underbrush removal projects on tribal and federal lands in an effort to reportedly pre-emptively combat wildfires”
- The American Competes Act (H.R. 1806), which would limit federal research authorizations

The Senate Energy and Natural Resources Committee released a [50-page section-by-section](#) of its bill and the House Natural Resources Committee released a [summary of amendments](#) that provides links to detailed one-pagers on each of the major amendments to its bill. Given the breadth of the energy legislation and the unique focus that it will receive in the coming months, it is important to understand the provisions of the House and Senate bills that impact local governments.

I. Policy Provisions Impacting Local Governments

- **Land and Water Conservation Fund (LWCF).** Created by Congress in 1965, the LWCF provides funding for natural areas (including National Parks, National Forests and National Wildlife Refuges), water resources, fish and wildlife habitat, cultural heritage and recreation opportunities for Americans. The LWCF also provides a 50/50 (federal/state) matching grants for state and local parks and recreation projects, such as hiking and riding trails, playgrounds and outdoor recreational facilities. While the LWCF is supposed to receive approximately \$900 million each year in funding, which is derived from royalties paid by energy companies drilling for oil and gas on the Outer Continental Shelf (OCS), Congress has typically diverted this funding for other uses. Therefore, there is currently a backlog of billions of dollars in deferred land acquisitions and maintenance and repair projects. There is a provision in the Senate bill that would permanently reauthorize the LWCF, however, changes would be made to its structure. Federal funding for the LWCF would be reallocated on a 40/40/20 basis: 40% for federal land acquisition; 40% for state programs; and 20% for costs including maintenance. The reauthorization also includes a directive for federal agencies to consider conservation easements as land acquisitions. The Senate bill would also permanently reauthorize the Historic Preservation Fund (both the LWCF and the Historic Preservation Fund are due to expire this fall). In addition, this provision would create a new National Park Maintenance and Revitalization Fund of \$150 million per year to address “high-priority deferred maintenance needs of the [National Park] Service that support critical infrastructure and visitor services.” Notably, the National Park Maintenance Fund would not be allowed to be used for land acquisitions. The provision to permanently reauthorize the LWCF was not included in the House-passed bill. While members in both chambers have voiced commitment to the LWCF, it could ultimately be left out. This is largely due to House Natural Resources Chairman Rob Bishop (R-UT) pushing for his own overhaul of the LWCF, mainly to reduce funding that would go to federal land acquisitions, and to significantly restrict acquisition funding in certain areas of the country, such as the West. Putting Chairman Bishop aside, with the current reauthorization of the LWCF in place for three years, Congress has time to address this issue, which alleviates the pressure to act. The FY 2016 omnibus appropriations bill enacted in December contained a provision to reauthorize the fund for an additional three years, and it included \$450 million in appropriations, which is an increase of \$144 million from FY 2015 funding.

- **Brownfields Reauthorizations.** The Senate bill would reauthorize the Brownfields program with an expanded eligibility for non-profit organizations. The reauthorization would also allow for new multipurpose brownfields grants to address more than one site at a time; would increase the level of allowable funding for remediation to \$650,000 per grant and up to \$950,000,000 for multipurpose grants; and would allow entities to use up to 8% of a brownfields loan for administrative costs. The reauthorization would also create a new “Small or Disadvantaged Community Recipients” grant category to assist communities, Indian tribes, rural areas and/or disadvantaged areas. The reauthorization would also prioritize “Waterfront Brownfields Sites,” which are sites that are adjacent to a body of water or a federally designated floodplain. Another new category created in the reauthorization is the “Clean Energy Brownfields Grants,” which would fund renewable or energy efficiency projects that are created at brownfields sites. There is no provision for Brownfields in the House-passed bill.
- **Diesel Emissions Reduction Act (DERA).** Also important to local governments – especially those that may own or operate their own fleet of vehicles, including school busses – the Senate bill would reauthorize the Diesel Emissions Reduction Act (DERA) program through 2021. The DERA program provides funding to entities for the conversion (or retiring) of diesel fleets to technologies that provide fewer greenhouse gas emissions. The House bill is silent on DERA.
- **SAVE Act.** This provision, included only in the Senate bill, is intended to increase home owners’ abilities to add energy efficiencies and renewable energies, such as solar, to their homes – in particular by allowing for those energy improvements to be financed through traditional mortgages. In addition, the provision would require that the value of the energy savings from those improvements be added to the appraised value of the property during the sale of the home. These provisions would allow home owners to finance energy efficiency upgrades and home buyers to compare sales prices of energy efficient homes to conventional homes.
- **Section 8 Multifamily Housing.** The Senate bill would direct the Department of Housing and Urban Development (HUD) to establish a demonstration program with the goal of providing payments to entities that have reduced energy and water costs. The pilot project would apply to Sec. 8 multifamily residential buildings, as well as to those serving the elderly and those with disabilities. The House bill does not include any HUD provisions.
- **Retrofitting Schools.** Both the House and Senate bills contain a provision that would establish a lead agency for a coordinated approach to providing technical assistance and information concerning funding resources to elementary schools; institutions of higher education; tribal and Department of Defense schools for energy efficiency, renewable energy and energy retrofitting projects for schools.
- **WaterSense.** This program, which is included in both the House and Senate bills, would direct the Environmental Protection Agency (EPA) to create a WaterSense label to promote water-efficient products, buildings, landscapes and facilities, similar to the existing EnergyStar concept.

- **Public Lands.** The Senate bill would allow for expedited permitting for infrastructure and electricity lines on federal and non-federal lands. The bill also addresses development of solar, wind and geothermal on public lands. The House-passed bill contains a similar provision, but only for natural gas transmission facilities and pipelines.
- **Net Metering.** The Senate bill would direct the Department of Energy to undertake a study of the costs and benefits of net-metering. Conversely, while the House-passed bill is silent on this provision, it contains its own direction to the Secretary of Energy for a report on the “weaknesses” in currently available smart meters.
- **Battery Storage.** The House bill calls for a report that would study the pros and cons of federal regulation with regard to battery storage development and deployment. The study would examine challenges to the widespread use of battery storage technology; the potential impact from large-scale battery and behind-the-meter storage could have on renewable energy utilization; potential grid-scale use nationwide; and would study policies that have been shown to promote storage technology deployment by state and local governments and private end-users. While the Senate bill is generally supportive of research and development concerning battery storage, particularly associated with vehicle technology, it is silent on calling for a report.
- **Energy and Manufacturing Workforce Development.** The House bill provision would require the Secretary of Energy, when considering awards for existing grant programs, to prioritize education and training for energy and manufacturing-related jobs in order to increase the number of skilled workers trained to work in energy and manufacturing-related fields. The Senate proposes an “Energy Workforce Pilot Grant Program,” which is detailed below. In addition, the Senate bill would establish a “21st Century Energy Workforce Advisory Board” to develop a strategy for the support and development of a skilled energy workforce, including internship, mentorships retraining displaced workers and apprentice programs of states and units of local government.
- **Minorities in Energy Initiative.** The House bill would direct the Secretary of Energy to prioritize the education and training of underrepresented groups in energy and manufacturing-related jobs by:
 - Establish a clearing house to maintain and update information and resources on training and workforce development programs for energy and manufacturing-related jobs, including job training and workforce development programs available to assist displaced and unemployed energy and manufacturing workers transitioning to new employment; and
 - Provide technical assistance for states, local educational agencies, schools, community colleges, universities (including minority serving institutions), workforce development programs, labor-management organizations and industry organizations that would like to develop and implement energy and manufacturing-related training programs.

In addition, the Minorities in Energy Initiative provision would direct the Department of Energy to “give special consideration to minority serving institutions and Historically Black Colleges and Universities and dislocated energy and manufacturing workers”; however, no additional funds are authorized to carry out these requirements. The House bill maintains that “such requirements shall be carried out using amounts otherwise authorized.” The Senate bill makes reference to supporting the Minorities in Energy Initiative.

- **Secure Rural Schools and Community Self-Determination Act Amendments.** This Act has traditionally provided funding to county schools and roads. The provision in the House bill would prohibit funding from being used for local schools, facilities or educational purposes. However, funding would be allowed to be used to reimburse counties for law enforcement patrols performed on federal land, and to cover training costs and equipment purchases directly related to emergency services. The Senate bill carries no such provision.
- **Forest Management Fund.** The House bill would create a state-supported Forest Management Fund to plan, carry out and monitor a forest management activity on System or public land. The Senate is silent on this provision.
- **Wildfire Suppression.** The House bill would direct the President to establish a wildfire suppression operations account for wildfires on federal lands. Funds could be used to conduct wildfire suppression operations on non-federal land, and the respective Departments could secure reimbursement for the cost of such operations.
- **Cross-Sector Partnerships and Grant Competitiveness.** In both the House and Senate Bills is a provision that would allow directors of the National Laboratories signature authority with respect to any cooperative research and development agreement or non-federal work-for-others agreement of which the total cost is less than \$1 million.
- **Use of Federal Disaster Relief.** The Senate bill would allow for recipients of federal disaster relief to use that assistance to replace or repair a damaged product or structure with an energy-efficient product or energy-efficient structure. The House bill contains no such provision.
- **Sportsman’s Access to Federal Lands.** Both the House and Senate bills contain Sportsmen Act provisions, with some variations. The Senate’s bill contains the Sportsman’s Act (S. 556), a previously introduced, controversial bill, which would instruct federal agencies to consider public lands “open unless closed” for hunting and recreational shooting, among other outdoor activities. Specifically, this provision would:
 - Establish a national “open unless closed” standard for all US Forest lands and Bureau of Land Management (BLM) lands, which would include hunting, recreational shooting, fishing and other outdoor activities. The provision would also allow for the use of volunteer hunters to cull wildlife on federal lands.
 - Require agency justifications for proposed closures and limit temporary closures to no more than 180 days.

- Allow federal lands to be used for shooting ranges. The Senate bill exempts certain federal lands from this provision, including components of the National Wilderness Preservation System, national monuments, national volcanic monuments or national scenic areas and certain components of the National Wild and Scenic Rivers System.
- Expand and fund shooting ranges, including construction and expansion of shooting ranges on federal and non-federal lands.
- Allow “qualified volunteers” to hunt and cull wildlife in the National Park System, National Forests System, National Wilderness System and other and “System” lands.
- Implement the “Hunt Unrestricted on National Treasures” (HUNT) Act, authored by Sen. Martin Heinrich (D-NM), that would direct agencies to increase access to high-priority federal lands where hunting, fishing and outdoor recreation are permitted.
- Prohibit the National Park Service from restricting transportation of bows and crossbows that remain in a vehicle while an individual is in a national park unit.
- Facilitate commercial filming on public lands.

The House bill contains its own version of the Sportsman Act, called the Sportsmen’s Heritage and Recreational Enhancement (SHARE) Act. The House bill would provide for the following:

- **Open Unless Closed.** Similarly to the Senate bill, this provision would open lands to shooting and hunting by requiring the US Forest Service and the BLM to open federal lands to shooting, hunting and fishing in all cases, except for where specific portions have been closed to those activities. This provision would also impact National Parks System lands, National Forest System lands, US Fish and Wildlife Service lands, Wilderness Areas, Wilderness Study Areas, and lands designated as wilderness or primitive or semi-primitive and National Monuments. The House bill, similar to the Senate, would also allow for the use of volunteer hunters to cull wildlife on federal lands.
- **Guns on Recreational Lands.** The House provision would authorize the possession of guns on any Army Corps of Engineers’ recreation lands, including campgrounds and recreational facilities.
- **Expansion of Shooting Ranges.** The provision would encourage state and local governments to maintain shooting ranges; would provide funding for shooting ranges; would allow the National Parks Service to establish corridors for shooting on federal lands; and would provide for expansion and construction of shooting ranges on non-federal lands. (The Senate bill also contains a similar provision noted above with exceptions for certain federal lands.)
- **Eliminates Regulation on Ammunition.** The provision would permanently exempt ammunition and fishing tackle from EPA regulations; would prevent Departments of Interior and Agriculture from regulating the use of ammunition and fishing tackle based upon lead content.

- **Eliminates Restrictions on Fishing.** The provision would prevent Department of Commerce and Department of Interior from restricting any commercial or recreational fishing without prior approval by states’ wildlife management agencies.
- **Funding for Maintenance of Federal Lands.** The provision would allow federal agencies to use funds from the Federal Land Disposal Account for deferred maintenance activities on federal lands and for the purchase of inholdings.

II. Funding Authorizations Impacting Local Governments

Subject to appropriations, the Senate bill contains several provisions that would create programs or provide grants that may be of interest to local governments. The House contains only one funding provision directly applicable to local governments – the Smart Energy and Water Efficiency Pilot Program, which is identical the Senate’s provision. We are also including funding opportunities that pertain to colleges and universities, as well as innovative technologies for informational and partnering purposes.

State and Local Governments:

- **Weatherization Assistance Program (reauthorization)**
 - \$350 million (for each of FY 2016-2020) to improve the energy efficiency of homes of low-income families. The program would include competitive grant funding for energy retrofits for low-income, single and multifamily residential homes and not-profits.
- **Electricity and Energy Storage Programs**
 - \$200 million (for each of FY 2017-2026) for electricity and energy storage programs including:
 - State and Regional Electricity Distribution Planning
 - For partnerships between the federal government and state or regional organizations to facilitate local distribution plans by conducting a resources assessment and analysis of future demand and distribution requirements and developing open sources tools for state and regional planning and operations.
 - Hybrid Micro-Grid Systems for Isolated and Resilient Communities
 - To promote development of hybrid micro-grid systems for isolated communities and micro-grid systems to increase the resilience of critical infrastructure.
 - Electric System Grid Architecture, Scenario Development and Modeling
 - To establish a collaborative process to develop model grid architecture and a set of future scenarios for the electric system to examine the impacts of different combinations of resources on the electric grid (for national laboratories, states, industry representatives, academic institutions, independent research institutes).

- **State Energy Program** (*reauthorization*)

- \$90,000,000 (for each of FY 2016-2020) to provide funding and technical assistance to state energy offices to help states advance their clean energy economy and national energy goals. The legislation would reduce the amount of funding for this program from \$125 million per year to \$90 million for each fiscal year through FY 2020 for competitively awarded financial assistance.

- **Cybersecurity for the Energy Sector Research, Development and Demonstration Program**

- \$65 million (for each of FY 2017-2025) for partnerships between federal agencies, the energy sector and other stakeholders to develop advanced cybersecurity applications and technologies for the energy sector and to leverage electric grid architecture.

- **Efficient Materials Pilot Program**

- \$10 million (for each of FY 2016–2020) for adding energy efficiency or renewables capabilities that reduce energy use for non-profit buildings. The term “nonprofit building” includes:
 - A hospital;
 - A youth center;
 - A school;
 - A social-welfare program facility;
 - A faith-based organization; and
 - Any other nonresidential and non-commercial structure

- **Grid Storage Program**

- \$50 million (for each of FY 2017-2026) for DOE to provide technical and financial assistance to states, tribes or units of local government to participate in or use research, development or deployment of the technology and demonstration of electric grid energy storage that addresses areas identified in the 2013 DOE Strategic Plan for Grid Energy Storage, including:
 - Materials, electric thermal or electrochemical research
 - Power conversion technologies research
 - Empirical industry standards compared to storage capacity, cycle length and reliability of different types of electricity storage
 - Grid-scale testing and analysis of storage devices
 - Mitigation and guidelines for electricity storage device safety and reliability
 - Standards for storage device performance and grid interconnection

- **Energy Workforce Pilot Grant Program**

- \$20 million (for each of FY 2017-2020) to competitive grants for job training programs that lead to an industry-recognized credential. Eligible for:
 - Public or non-profit organizations
 - Labor organizations
 - Postsecondary education organizations
 - Workforce development boards
 - Public or private energy employers

- **Smart Energy and Water Efficiency Pilot Program** (*in both House and Senate bills*)

- \$15 million for grants to eligible entities (including municipalities) to demonstrate unique, advanced or innovative technology based solutions that will:
 - Increase the energy efficiency of water, wastewater and water reuse systems to help energy and water conservation
 - Support implementation of innovative processes and installation of automated systems that provide real-time data on energy and water
 - Support water conservation and quality through the use of internet-connected technologies (sensors, hardware, etc.)

- **E-Prize Competition Pilot Program**

- \$10 million to broadly implement sustainable community and regional energy solutions that seek to reduce energy costs through increased efficiency, conservation and technology innovation in high-cost regions.
 - A “high-cost region” is a region in which the average annual unsubsidized costs of electrical power retail rates or household space heating costs per square foot exceed 150% of the national average.

- **North American Wetlands Conservation Act**

- Amends the act to include \$50 million (for each of FY 2015-2020) for increasing bird populations and wetland habitat.

- **National Fish Habitat Conservation**

- \$7.2 million (for each of FY2016-2021) to provide funds for fish habitat conservation projects.

Colleges and Universities:

- **Building Training and Assessment Centers**

- \$10 million for institutions of higher education to establish building training and assessment centers:
 - To train engineers, architects, building scientists, building energy permitting and enforcement officials in energy-efficient design and operation
 - To assist institutions of higher education in training building technicians

- **Career Skills Training**

- \$10 million in grants (each requiring a 50% match) to entities to train students via classroom and on-the-job instruction to obtain industry-related certifications to install energy efficient buildings technologies.

- **Microlab Technology Commercialization**

- \$50 million to establish a microlab program within national laboratories that:
 - Enhances collaboration between regional research groups, such as institutions of higher education and industry groups
 - Accelerates technology transfer from national laboratories to the marketplace
 - Promotes regional workforce development through STEM instruction and training

- **Exascale Computing Program**

- \$272 million for FY16, \$340 million for FY17 and \$360 million for FY18 for a research program to develop two or more exascale computing machine architectures by national laboratory partnerships with institutions of higher education.

Innovative Technologies:

- **Carbon Dioxide Capture Technology Prize**

- \$50 million for projects concerning carbon dioxide capture from media in which the concentration of carbon dioxide is dilute, including:
 - Designs for a promising capture technology
 - Successful bench-scale demonstration of a capture technology
 - Operational capture technology on a commercial scale that meets minimum levels that will later be determined by the Secretary of Energy

- **Energy Sector Component Testing for Cyberresilience Program**

- \$15 million (for each of FY 2017-2025) for establishing a cybertesting and mitigation program to identify vulnerabilities of energy sector supply chain products to known threats.

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