TITLE ___—FEDERAL RENEWABLE ELECTRICITY STANDARD

SEC. __01. FEDERAL RENEWABLE ELECTRICITY STANDARD.

(a) IN GENERAL.—Title VI of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) is amended by adding at the end the following:

"SEC. 610. FEDERAL RENEWABLE ELECTRICITY STANDARD.

"(a) DEFINITIONS.—In this section:

"(1) BASE QUANTITY OF ELECTRICITY.—

"(A) IN GENERAL.—The term 'base quantity of electricity' means the total quantity of electricity sold by an electric utility to electric consumers in a calendar year.

"(B) EXCLUSIONS.—The term 'base quantity of electricity' does not include—

"(i) electricity generated by a hydroelectric facility (including a pumped storage facility but excluding qualified hydropower) owned by an electric utility or sold under contract or rate order to an electric utility to meet the needs of the retail customers of the utility; or "(ii) electricity generated through the incineration of municipal solid waste owned by an electric utility or sold under contract or rate order to an electric utility to meet the needs of the retail customers of the utility.

"(2) BIOMASS.—The term 'biomass' has the meaning given the term in section 203(b) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)).

"(3) DISTRIBUTED GENERATION FACILITY.—The term 'distributed generation facility' means a facility at or near a customer site that provides electric energy to 1 or more customers for purposes other than resale other than to a utility through a net metering arrangement.

"(4) EXISTING RENEWABLE ENERGY.—

"(A) IN GENERAL.—The term 'existing renewable energy' means electric energy generated at a facility (including a distributed generation facility) placed in service prior to January 1, 2006, from solar, wind, or geothermal energy, ocean energy, biomass, or landfill gas.

"(B) EXCLUSION.—The term 'existing renewable energy' does not include electric energy described in paragraph (8)(B).

"(5) GEOTHERMAL ENERGY.—The term 'geothermal energy' means energy derived from a geothermal deposit (within the meaning of section 613(e)(2) of the Internal Revenue Code of 1986).

"(6) INCREMENTAL COST OF COMPLIANCE.—

"(A) IN GENERAL .—The term 'incremental cost of compliance' means—

"(i) the costs attributable to all retail sales of electricity incurred in a year by an electric utility to—

"(I) generate renewable energy eligible for Federal renewable energy credits;

"(II) acquire Federal renewable energy credits; or

"(III) make alternative compliance payments in order to comply with the requirements of subsection (b); less

"(ii)(I) the costs the electric utility would have incurred to serve all of the retail customers of that electric utility in that year to generate or acquire additional electricity not eligible for renewable energy credits if the requirements of subsection (b) did not apply to the electric utility; and

"(II) the costs of compliance with any comparable State renewable requirement.

"(B) COST OF ELECTRICITY.—In calculating the incremental cost of compliance of an electric utility under this section, the Secretary shall take into account the reduction, if any, on the cost of electricity generated with fossil fuels associated with increased reliance on renewable electric energy generation.

"(7) INCREMENTAL GEOTHERMAL PRODUCTION.—

"(A) IN GENERAL.—The term 'incremental geothermal production' means, for any year, the excess of—

"(i) the total kilowatt hours of electricity produced from a facility (including a distributed generation facility) using geothermal energy; over

"(ii) the average number of kilowatt hours produced annually at the facility for 5 of the previous 7 calendar years before the date of enactment of this section after eliminating the highest and the lowest kilowatt hour production years in that 7-year period.

"(B) SPECIAL RULE.—A facility described in subparagraph (A) that was placed in service at least 7 years before the date of enactment of this section shall, commencing with the year in which that date of enactment occurs, reduce the amount calculated under subparagraph (A)(ii) each year, on a cumulative basis, by the average percentage decrease in the annual kilowatt hour production for the 7-year period described in subparagraph (A)(ii) with such cumulative sum, but not to exceed 30 percent.

"(8) INCREMENTAL HYDROPOWER.—

"(A) IN GENERAL.—The term 'incremental hydropower' means additional energy generated as a result of efficiency improvements or capacity additions made on or after January 1, 2001.

"(B) EXCLUSION.—The term 'incremental hydropower' does not include additional energy generated as a result of operational changes not directly associated with efficiency improvements or capacity additions.

"(C) MEASUREMENT AND CERTIFICATION.—Efficiency improvements and capacity additions referred to in subparagraph (A) shall be—

“(i) measured on the basis of the same water flow information used to determine a historic average annual generation baseline for the hydroelectric facility; and

“(ii) certified by the Secretary or the Federal Energy Regulatory Commission.

“(9) NEW RENEWABLE ENERGY.—The term ‘new renewable energy’ means—

“(A) electric energy generated at a facility (including a distributed generation facility) placed in service on or after January 1, 2006, from—

“(i) solar, wind, or geothermal energy or ocean energy;

“(ii) biomass;

“(iii) landfill gas;

“(iv) qualified hydropower; or

“(v) marine and hydrokinetic renewable energy (as defined in section 632 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17211)); and

“(B) in the case of electric energy generated at a facility (including a distributed generation facility) placed in service before January 1, 2006—

"(i) the additional energy above the average generation during the period beginning on January 1, 2004, and ending on January 1, 2006, at the facility from—

"(I) solar or wind energy or ocean energy;

"(II) biomass;

"(III) landfill gas; and

"(IV) qualified hydropower; or

"(ii) incremental geothermal production.

"(10) QUALIFIED HYDROPOWER.—

"(A) IN GENERAL.—The term 'qualified hydropower' means—

"(i) incremental hydropower; and

"(ii) additions of capacity made on or after January 1, 2001, or the effective commencement date of an existing applicable State renewable electricity standard program at an existing nonhydroelectric dam, if—

"(I) the hydroelectric project installed on the nonhydroelectric dam—

"(aa) is licensed by the Federal Energy Regulatory Commission, or is exempt from licensing, and is in compliance with the terms and conditions of the license or exemption; and

"(bb) meets all other applicable environmental, licensing, and regulatory requirements, including applicable fish passage requirements;

"(II) the nonhydroelectric dam—

"(aa) was placed in service before the date of enactment of this section;

"(bb) was operated for flood control, navigation, or water supply purposes; and

"(cc) did not produce hydroelectric power as of the date of enactment of this section; and

"(III) the hydroelectric project is operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements imposed under applicable law that change the water surface elevation for the purpose of improving the environmental quality of the affected waterway, as certified by the Federal Energy Regulatory Commission.

"(B) STANDARDS.—Nothing in this paragraph or the application of this paragraph shall affect the standards under which the Federal Energy Regulatory Commission issues licenses for and regulates hydropower projects under part I of the Federal Power Act (16 U.S.C. 791a et seq.).

"(b) RENEWABLE ENERGY AND ENERGY EFFICIENCY REQUIREMENT.—

"(1) REQUIREMENT.—

"(A) IN GENERAL.—Subject to subparagraph (B), each electric utility that sells electricity to electric consumers for a purpose other than resale shall obtain a percentage of the base quantity of electricity the electric utility sells to electric consumers in any calendar year from new renewable energy, existing renewable energy, or energy efficiency.

"(B) PERCENTAGE.—Except as provided in section 611, the percentage obtained in a calendar year under subparagraph (A) shall not be less than the amount specified in the following table:

“Calendar year:	**Minimum annual percentage:**
2011 through 2013	3.0
2014 through 2016	6.0
2017 through 2018	9.0
2019 through 2020	12.0
2021 through 2039	15.0

“(2) MEANS OF COMPLIANCE.—An electric utility shall meet the requirements of paragraph (1) by—

“(A) submitting to the Secretary renewable energy credits issued under subsection (c);

“(B) submitting Federal energy efficiency credits issued under subsection (i), except that those credits may not be used to meet more than 26.67 percent of the requirements under paragraph (1) in any calendar year;

“(C) making alternative compliance payments to the Secretary at the rate of 2.1 cents per kilowatt hour (as adjusted for inflation under subsection (g) if the electric utility does not elect to petition the Secretary to waive the requirements under subsection (d)(3)(C)); or

“(D) a combination of activities described in subparagraphs (A), (B), and (C).

“(3) PHASE-IN.—The Secretary shall prescribe, by regulation, a reasonable phase-in of the requirements of paragraph (1) as the requirements apply to an electric utility that becomes subject to this section on or after January 1, 2013.

"(c) FEDERAL RENEWABLE ENERGY AND ENERGY EFFICIENCY CREDIT TRADING PROGRAMS.—

"(1) IN GENERAL.—Not later than January 1, 2011, the Secretary shall establish a Federal renewable energy credit trading program, and a Federal energy efficiency credit trading program, under which electric utilities shall submit to the Secretary Federal renewable energy credits and Federal energy efficiency credits to certify the compliance of the electric utilities with subsection (b)(1).

"(2) ADMINISTRATION.—As part of the program, the Secretary shall—

"(A) issue renewable energy credits to generators of electric energy from new renewable energy;

"(B) to the extent that renewable sources of electricity are used in combination with other sources of energy, issue credits only to the extent that the electricity generated is from renewable resources;

"(C) issue renewable energy credits to electric utilities associated with State renewable electricity standard compliance mechanisms pursuant to subsection (h);

"(D) issue energy efficiency credits pursuant to subsection (i);

"(E) subject to subparagraph (F), ensure that a kilowatt hour, including the associated renewable energy credit or energy efficiency credit, shall be used only once for purposes of compliance with this Act;

"(F) allow double credits for generation from facilities on Indian land, and triple credits for generation from small renewable distributed generators (meaning those no larger than 1 megawatt), except that no distributed renewable generation facilities on Indian land shall receive a greater number of credits than triple credits; and

"(G) ensure that, with respect to a purchaser that, as of the date of enactment of this section, has a purchase agreement from a renewable energy facility placed in service before that date, the credit associated with the generation of renewable energy under the contract is issued to the purchaser of the electric energy to the extent that the contract does not already provide for the allocation of the Federal credit.

"(3) DURATION.—A credit described in subparagraph (A), (B), (C), or (D) of paragraph (2) may only be used for compliance with this section during the 3-year period beginning on the date of issuance of the credit.

"(4) TRANSFERS.—An electric utility that holds credits in excess of the quantity of credits needed to comply with subsection (b) may transfer the credits to another electric utility in the same utility holding company system.

"(5) DELEGATION OF MARKET FUNCTION.—

"(A) IN GENERAL.—The Secretary may delegate to—

"(i) an appropriate market-making entity the administration of a national renewable energy credit market and a national energy efficiency credit market for purposes of creating a transparent national market for the sale or trade of renewable energy credits and energy efficiency credits; and

"(ii) regional entities the tracking of dispatch of renewable generation.

"(B) ADMINISTRATION.—Any delegation under subparagraph (A) shall ensure that the tracking and reporting of information concerning the dispatch of renewable generation is transparent, verifiable, and independent of any generation or load interests with obligations under this section. .

"(d) ENFORCEMENT.—

"(1) CIVIL PENALTIES.—Any electric utility that fails to meet the requirements of subsection (b) shall be subject to a civil penalty.

"(2) AMOUNT OF PENALTY.—The amount of the civil penalty shall be equal to the product obtained by multiplying—

"(A) the number of kilowatt-hours of electric energy sold to electric consumers in violation of subsection (b); by

"(B) 200 percent of the value of the alternative compliance payment, as adjusted for inflation under subsection (g).

"(3) MITIGATION OR WAIVER.—

"(A) PENALTY.—

"(i) IN GENERAL.—The Secretary may mitigate or waive a civil penalty under this subsection if the electric utility is unable to comply with subsection (b) due to a reason outside of the reasonable control of the electric utility.

"(ii) AMOUNT.—The Secretary shall reduce the amount of any penalty determined under paragraph (2) by the amount paid by the electric utility to a State for failure to comply with the requirement of a State renewable energy program if the State requirement is greater than the applicable requirement of subsection (b).

"(B) REQUIREMENT.—The Secretary may waive the requirements of subsection (b) for a period of up to 5 years with respect to an electric utility if the Secretary determines that the electric utility cannot meet the requirements due to a hurricane, tornado, fire, flood, earthquake, ice storm, or other natural disaster or act of God beyond the reasonable control of the utility.

"(C) RATEPAYER PROTECTION.—Effective beginning June 1, 2010, and not later than June 1 of each year thereafter, an electric utility may petition the Secretary to waive, for the following compliance year, all or part of the requirements of subsection (b) in order to limit the rate impact of the incremental cost of compliance of the electric utility to not more than 4 percent per retail customer in any year.

"(4) PROCEDURE FOR ASSESSING PENALTY.—The Secretary shall assess a civil penalty under this subsection in accordance with the procedures prescribed by section 333(d) of the Energy Policy and Conservation Act (42 U.S.C. 6303(d)).

"(e) STATE RENEWABLE ENERGY ACCOUNT.—

"(1) IN GENERAL.—There is established in the Treasury a separate account to be known as the 'State Renewable Energy Account' (referred to in this subsection as the 'Account').

"(2) DEPOSITS.—All amounts collected by the Secretary from alternative compliance payments and the assessment of civil penalties under this section shall be deposited into the Account.

"(3) TREATMENT OF COLLECTIONS.—Notwithstanding section 3302 of title 31, United States Code, all amounts deposited into the Account shall be available to the Secretary for expenditure in accordance with paragraph (4), without further appropriation, and shall remain available until expended.

"(4) GRANTS TO GOVERNORS.—The Secretary shall use the amounts deposited in the Account to provide grants to the Governors of States in which electric utilities have made alternative compliance payments or paid civil penalties in proportion to the amounts deposited into the Account from each State.

"(5) USE OF GRANTS.—The Governor of any State receiving a grant under this subsection may expend grant funds solely for purposes of—

"(A) increasing the quantity of electric energy produced from a renewable energy source in the State; and

"(B) offsetting the cost of carrying out this section paid by electric consumers in the State through—

"(i) direct grants to electric consumers; or

"(ii) energy efficiency investments.

"(6) INFORMATION AND REPORTS.—As a condition of providing a grant under this subsection, the Secretary may require a Governor of a State to keep such accounts or records, and furnish such information and reports, as the Secretary determines are necessary and appropriate for determining compliance with this subsection.

"(f) EXEMPTIONS.—During any calendar year, this section shall not apply to an electric utility—

"(1) that sold less than 4,000,000 megawatt-hours of electric energy to electric consumers during the preceding calendar year; or

"(2) in Hawaii.

"(g) INFLATION ADJUSTMENT.—Not later than December 31 of each year beginning in 2008, the Secretary shall adjust for inflation the rate of the alternative compliance payment under subsection (b)(2)(C).

"(h) STATE PROGRAMS.—

"(1) IN GENERAL.—Subject to paragraph (2), nothing in this section diminishes any authority of a State or political subdivision of a State to adopt or enforce any law or regulation respecting renewable energy or energy efficiency, or the regulation of electric utilities,.

"(2) COMPLIANCE.—Except as provided in subsection (d)(3), no such law or regulation shall relieve any person of any requirement otherwise applicable under this section.

"(3) COORDINATION.—The Secretary, in consultation with States having such renewable energy and energy efficiency programs, shall, to the maximum extent practicable, facilitate coordination between the Federal program and State programs.

"(4) REGULATIONS.—

"(A) IN GENERAL.—The Secretary, in consultation with States, shall promulgate regulations to ensure that an electric utility that is subject to the requirements of this section and is subject to a State renewable energy standard receives renewable energy credits if—

"(i) the electric utility complies with the State standard by generating or purchasing renewable electric energy or renewable energy certificates or credits representing renewable electric energy; or

"(ii) the State imposes or allows other mechanisms for achieving the State standard, including the payment of taxes, fees, surcharges, or other financial obligations.

"(B) AMOUNT OF CREDITS.—The amount of credits received by an electric utility under this subsection shall equal—

"(i) in the case of subparagraph (A)(i), the quantity of renewable energy resulting from the generation or purchase by the electric utility of existing renewable energy or new renewable energy; and

"(ii) in the case of subparagraph (A)(ii), the pro rata share of the electric utility, based on the contributions to the mechanism made by the electric utility or customers of the electric utility, in the State, of the quantity of renewable energy resulting from those mechanisms.

"(C) PROHIBITION ON DOUBLE COUNTING.—The regulations promulgated under this paragraph shall ensure that a kilowatt-hour associated with a renewable energy credit issued pursuant to this subsection shall not be used for compliance with this section more than once.

"(i) ENERGY EFFICIENCY CREDITS.—

"(1) DEFINITIONS.—In this subsection:

"(A) CUSTOMER FACILITY SAVINGS.—The term 'customer facility savings' means a reduction in the consumption of end-use electricity at a facility of an end-use consumer of electricity served by an electric utility, as compared to—

"(i) consumption at the facility during a base year, taking into account reductions attributable to causes other than energy efficiency investments (such as economic downturns, reductions in customer base, favorable weather conditions, or other such causes); or

"(ii) in the case of new equipment (regardless of whether the new equipment replaces existing equipment at the end of the useful life of the existing equipment), consumption by similar equipment of average efficiency available for purchase at the time that new equipment is acquired.

"(B) ELECTRICITY SAVINGS.—The term 'electricity savings' means—

"(i) customer facility savings of electricity consumption adjusted to reflect any associated increase in fuel consumption at the facility;

"(ii) reductions in distribution system losses of electricity achieved by a retail electricity distributor, as compared to losses attributable to new or replacement distribution system equipment of average efficiency (as defined by the Secretary by regulation); and "(iii) the output of new combined heat and power systems, to the extent provided under paragraph (5).

"(C) QUALIFIED ELECTRICITY SAVINGS.—The term 'qualified electricity savings' means electricity saving that meet the measurement and verification requirements of paragraph (4).

"(2) PETITION.—On petition by the Governor of a State, the Secretary shall allow up to 26.67 percent of the requirements of an electric utility under subsection (b)(1) associated with the sales of electricity of the utility in the State to be met by submitting Federal energy efficiency credits issued pursuant to this subsection.

"(3) ISSUANCE OF ENERGY EFFICIENCY CREDITS.—

"(A) IN GENERAL.—The Secretary shall issue energy efficiency credits for qualified electricity savings achieved in States described in paragraph (2) in accordance with this subsection.

"(B) QUALIFIED ELECTRICITY SAVINGS.—Subject to subparagraph (C), in accordance with regulations promulgated by the Secretary, the Secretary shall issue credits for—

"(i) qualified electricity savings achieved by an electric utility on or after the date of enactment of this section; and

"(ii) qualified electricity savings achieved by other entities (including State agencies) on or after the date of enactment of this section if—

"(I) the measures used to achieve the qualified electricity savings were installed or placed in operation by the entity seeking the credit; and

"(II) an electric utility eligible to receive efficiency did not pay a substantial portion of the cost of achieving the qualified electricity savings (unless the utility has waived any entitlement to the credit).

"(C) STANDARDS.—No credits shall be issued for electricity savings achieved as a result of compliance with a national, State, or local building, equipment, or appliance efficiency standard.

"(4) MEASUREMENT AND VERIFICATION OF ELECTRICITY SAVINGS.—Not later than January 2010, the Secretary shall promulgate regulations regarding the measurement and verification of electricity savings under this subsection, including regulations covering—

"(A) procedures and standards for defining and measuring electricity savings that will be eligible to receive credits under paragraph (3), which shall—

"(i) specify the types of energy efficiency and energy conservation that will be eligible for the credits;

"(ii) require that energy consumption for customer facilities or portions of facilities in the applicable base and current years be adjusted, as appropriate, to account for changes in weather, level of production, and building area;

"(iii) account for the useful life of electricity savings measures;

"(iv) include specified electricity savings values for specific, commonly-used efficiency measures; and

"(v) exclude electricity savings that—

"(I) are not properly attributable to measures carried out by the entity seeking the credit;

"(II) have already been credited under this section to another entity; or

"(III) do not result from actions not intended to achieve electricity savings;

"(B) procedures and standards for third-party verification of reported electricity savings; and

"(C) such requirements for information, reports, and access to facilities as may be necessary to carry out this subsection.

"(5) COMBINED HEAT AND POWER.—Under regulations promulgated by the Secretary, the increment of electricity output of a new combined heat and power system that is attributable to the higher efficiency of the combined system (as compared to the efficiency of separate production of the electric and thermal outputs), shall be considered electricity savings under this subsection.

"(j) BIOMASS HARVESTING AND SUSTAINABILITY.—The provisions of this section relating to biomass shall be administered in accordance with section 203(e) of the Energy Policy Act of 2005 (42 U.S.C. 15852(e)).

"(k) RECONSIDERATION.—

"(1) REVIEW.—

"(A) IN GENERAL.—Not later than January 15, 2017, and every 5 years thereafter, the Secretary shall review and make recommendations to Congress on the program established under this section.

"(B) ANALYSIS.—The review shall analyze whether—

"(i) the program established under this section has contributed to an economically harmful increase in electricity rates in regions of the United States;

"(ii) the program has resulted in net economic benefits for the United States; and

"(iii) new technologies and clean, renewable energy sources will advance the purposes of this section.

"(2) RECOMMENDATIONS.—The Secretary shall submit to Congress recommendations on whether—

"(A) the percentage of energy efficiency credits eligible to be submitted under subsection (b)(1) should be increased or decreased;

"(B) the percentage of renewable electricity required under subsection (b)(1) should be increased or decreased; and

"(C) the definition of 'renewable energy' should be expanded to reflect advances in technology or previously unavailable sources of clean or renewable energy.

"(3) REPORT.—Not later than January 15, 2017, the Secretary shall submit to Congress a report that describes any recommendations of the Secretary on changes to the program established under this section.

"(l) REGULATIONS.—Not later than 1 year after the date of enactment of this section, the Secretary shall promulgate regulations implementing this section.

"(m) TERMINATION OF AUTHORITY.—This section and the authority provided by this section terminate on December 31, 2039.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. prec. 2601) is amended by adding at the end of the items relating to title VI the following:

"Sec. 610. Federal renewable electricity standard.".