

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide for a renewable portfolio standard.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

H. R. 6

To reduce our Nation's dependency on foreign oil by investing in clean, renewable, and alternative energy resources, promoting new emerging energy technologies, developing greater efficiency, and creating a Strategic Energy Efficiency and Renewables Reserve to invest in alternative energy, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . RENEWABLE PORTFOLIO STANDARD.**

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

6 **“SEC. 610. FEDERAL RENEWABLE PORTFOLIO STANDARD.**

7 “(a) RENEWABLE ENERGY REQUIREMENT.—

1 “(1) IN GENERAL.—Each electric utility that
 2 sells electricity to electric consumers shall obtain a
 3 percentage of the base amount of electricity it sells
 4 to electric consumers in any calendar year from new
 5 renewable energy or existing renewable energy. The
 6 percentage obtained in a calendar year shall not be
 7 less than the amount specified in the following table:

“Calendar year:	Minimum annual percentage:
2010 through 2012	3.75
2013 through 2016	7.50
2017 through 2019	11.25
2020 through 2030	15.0

8 “(2) MEANS OF COMPLIANCE.—An electric util-
 9 ity shall meet the requirements of paragraph (1)
 10 by—

11 “(A) submitting to the Secretary renewable
 12 energy credits issued under subsection (b);

13 “(B) making alternative compliance pay-
 14 ments to the Secretary at the rate of 2 cents
 15 per kilowatt hour (as adjusted for inflation
 16 under subsection (g)); or

17 “(C) a combination of activities described
 18 in subparagraphs (A) and (B).

19 “(b) FEDERAL RENEWABLE ENERGY CREDIT TRAD-
 20 ING PROGRAM.—

1 “(1) IN GENERAL.—Not later than July 1,
2 2009, the Secretary shall establish a Federal renew-
3 able energy credit trading program under which elec-
4 tric utilities shall submit to the Secretary renewable
5 energy credits to certify the compliance of the elec-
6 tric utilities with respect to obligations under sub-
7 section (a)(1).

8 “(2) ADMINISTRATION.—As part of the pro-
9 gram, the Secretary shall—

10 “(A) issue tradeable renewable energy
11 credits to generators of electric energy from
12 new renewable energy;

13 “(B) issue nontradeable renewable energy
14 credits to generators of electric energy from ex-
15 isting renewable energy;

16 “(C) issue renewable energy credits to elec-
17 tric utilities associated with State renewable
18 portfolio standard compliance mechanisms pur-
19 suant to subsection (h);

20 “(D) ensure that a kilowatt hour, including
21 the associated renewable energy credit, shall be
22 used only once for purposes of compliance with
23 this Act;

24 “(E) allow double credits for generation
25 from facilities on Indian land, and triple credits

1 for generation from small renewable distributed
2 generators (meaning those no larger than 1
3 megawatt); and

4 “(F) ensure that, with respect to a pur-
5 chaser that, as of the date of enactment of this
6 section, has a purchase agreement from a re-
7 newable energy facility placed in service before
8 that date, the credit associated with the genera-
9 tion of renewable energy under the contract is
10 issued to the purchaser of the electric energy to
11 the extent that the contract does not already
12 provide for the allocation of the Federal credit.

13 “(3) DURATION.—A credit described in sub-
14 paragraph (A), (B), or (C) of paragraph (2) may
15 only be used for compliance with this section during
16 the 3-year period beginning on the date of issuance
17 of the credit.

18 “(4) TRANSFERS.—An electric utility that holds
19 credits in excess of the quantity of credits needed to
20 comply with subsection (a) may transfer the credits
21 to another electric utility in the same utility holding
22 company system.

23 “(5) DELEGATION OF MARKET FUNCTION.—
24 The Secretary may delegate to an appropriate mar-
25 ket-making entity the administration of a national

1 tradeable renewable energy credit market for pur-
2 poses of creating a transparent national market for
3 the sale or trade of renewable energy credits.

4 “(c) ENFORCEMENT.—

5 “(1) CIVIL PENALTIES.—Any electric utility
6 that fails to meet the compliance requirements of
7 subsection (a) shall be subject to a civil penalty.

8 “(2) AMOUNT OF PENALTY.—The amount of
9 the civil penalty shall be determined by multiplying
10 the number of kilowatt-hours of electric energy sold
11 to electric consumers in violation of subsection (a)
12 by the greater of—

13 “(A) the value of the alternative compli-
14 ance payment, as adjusted to reflect changes
15 for the 12-month period ending the preceding
16 November 30 in the Consumer Price Index for
17 All Urban Consumers published by the Bureau
18 of Labor Statistics of the Department of Labor;
19 or

20 “(B) 200 percent of the average market
21 value of renewable energy credits during the
22 year in which the violation occurred.

23 “(3) MITIGATION OR WAIVER.—The Secretary
24 may mitigate or waive a civil penalty under this sub-
25 section if the electric utility was unable to comply

1 with subsection (a) for reasons outside of the rea-
2 sonable control of the utility. The Secretary shall re-
3 duce the amount of any penalty determined under
4 paragraph (2) by an amount paid by the electric
5 utility to a State for failure to comply with the re-
6 quirement of a State renewable energy program if
7 the State requirement is greater than the applicable
8 requirement of subsection (a).

9 “(4) PROCEDURE FOR ASSESSING PENALTY.—
10 The Secretary shall assess a civil penalty under this
11 subsection in accordance with the procedures pre-
12 scribed by section 333(d) of the Energy Policy and
13 Conservation Act of 1954 (42 U.S.C. 6303).

14 “(d) STATE RENEWABLE ENERGY ACCOUNT PRO-
15 GRAM.—

16 “(1) IN GENERAL.—There is established in the
17 Treasury a State renewable energy account program.

18 “(2) DEPOSITS.—All money collected by the
19 Secretary from alternative compliance payments and
20 the assessment of civil penalties under this section
21 shall be deposited into the renewable energy account
22 established pursuant to this subsection.

23 “(3) USE.—Proceeds deposited in the State re-
24 newable energy account shall be used by the Sec-
25 retary, subject to appropriations, for a program to

1 provide grants to the State agency responsible for
2 developing State energy conservation plans under
3 section 362 of the Energy Policy and Conservation
4 Act (42 U.S.C. 6322) for the purposes of promoting
5 renewable energy production, including programs
6 that promote technologies that reduce the use of
7 electricity at customer sites such as solar water
8 heating.

9 “(4) ADMINISTRATION.—The Secretary may
10 issue guidelines and criteria for grants awarded
11 under this subsection. State energy offices receiving
12 grants under this section shall maintain such
13 records and evidence of compliance as the Secretary
14 may require.

15 “(5) PREFERENCE.—In allocating funds under
16 this program, the Secretary shall give preference—

17 “(A) to States in regions which have a dis-
18 proportionately small share of economically sus-
19 tainable renewable energy generation capacity;
20 and

21 “(B) to State programs to stimulate or en-
22 hance innovative renewable energy technologies.

23 “(e) RULES.—The Secretary shall issue rules imple-
24 menting this section not later than 1 year after the date
25 of enactment of this section.

1 “(f) EXEMPTIONS.—This section shall not apply in
2 any calendar year to an electric utility—

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

6 “(2) in Hawaii.

7 “(g) INFLATION ADJUSTMENT.—Not later than De-
8 cember 31 of each year beginning in 2008, the Secretary
9 shall adjust for inflation the rate of the alternative compli-
10 ance payment under subsection (a)(2)(B) and the amount
11 of the civil penalty per kilowatt-hour under subsection
12 (c)(2).

13 “(h) STATE PROGRAMS.—

14 “(1) IN GENERAL.—Nothing in this section di-
15 minishes any authority of a State or political sub-
16 division of a State to adopt or enforce any law or
17 regulation respecting renewable energy or the regu-
18 lation of electric utilities, but, except as provided in
19 subsection (c)(3), no such law or regulation shall re-
20 lieve any person of any requirement otherwise appli-
21 cable under this section. The Secretary, in consulta-
22 tion with States having such renewable energy pro-
23 grams, shall, to the maximum extent practicable, fa-
24 cilitate coordination between the Federal program
25 and State programs.

1 “(2) REGULATIONS.—

2 “(A) IN GENERAL.—The Secretary, in con-
3 sultation with States, shall promulgate regula-
4 tions to ensure that an electric utility that is
5 subject to the requirements of this section and
6 is subject to a State renewable energy standard
7 receives renewable energy credits if—

8 “(i) the electric utility complies with
9 State standard by generating or pur-
10 chasing renewable electric energy or renew-
11 able energy certificates or credits; or

12 “(ii) the State imposes or allows other
13 mechanisms for achieving the State stand-
14 ard, including the payment of taxes, fees,
15 surcharges, or other financial obligations.

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

19 “(i) in the case of subparagraph
20 (A)(i), the renewable energy resulting from
21 the generation or purchase by the electric
22 utility of existing renewable energy or new
23 renewable energy; and

24 “(ii) in the case of subparagraph
25 (A)(ii), the pro rata share of the electric

1 utility, based on the contributions to the
2 mechanism made by the electric utility or
3 customers of the electric utility, in the
4 State, of the renewable energy resulting
5 from those mechanisms.

6 “(C) PROHIBITION ON DOUBLE COUNT-
7 ING.—The regulations promulgated under this
8 paragraph shall ensure that a kilowatt-hour as-
9 sociated with a renewable energy credit issued
10 pursuant to this subsection shall not be used
11 for compliance with this section more than
12 once.

13 “(i) DEFINITIONS.—In this section:

14 “(1) BASE AMOUNT OF ELECTRICITY.—The
15 term ‘base amount of electricity’ means the total
16 amount of electricity sold by an electric utility to
17 electric consumers in a calendar year, excluding—

18 “(A) electricity generated by a hydro-
19 electric facility (including a pumped storage fa-
20 cility but excluding incremental hydropower);
21 and

22 “(B) electricity generated through the in-
23 cineration of municipal solid waste.

1 “(2) DISTRIBUTED GENERATION FACILITY.—

2 The term ‘distributed generation facility’ means a
3 facility at a customer site.

4 “(3) EXISTING RENEWABLE ENERGY.—The

5 term ‘existing renewable energy’ means, except as
6 provided in paragraph (7)(B), electric energy gen-
7 erated at a facility (including a distributed genera-
8 tion facility) placed in service prior to January 1,
9 2001, from solar, wind, or geothermal energy, ocean
10 energy, biomass (as defined in section 203(a) of the
11 Energy Policy Act of 2005), or landfill gas.

12 “(4) GEOTHERMAL ENERGY.—The term ‘geo-

13 thermal energy’ means energy derived from a geo-
14 thermal deposit (within the meaning of section
15 613(e)(2) of the Internal Revenue Code of 1986).

16 “(5) INCREMENTAL GEOTHERMAL PRODUC-
17 TION.—

18 “(A) IN GENERAL.—The term ‘incremental
19 geothermal production’ means for any year the
20 excess of—

21 “(i) the total kilowatt hours of elec-
22 tricity produced from a facility (including a
23 distributed generation facility) using geo-
24 thermal energy; over

1 “(ii) the average annual kilowatt
2 hours produced at such facility for 5 of the
3 previous 7 calendar years before the date
4 of enactment of this section after elimi-
5 nating the highest and the lowest kilowatt
6 hour production years in such 7-year pe-
7 riod.

8 “(B) SPECIAL RULE.—A facility described
9 in subparagraph (A) that was placed in service
10 at least 7 years before the date of enactment of
11 this section shall, commencing with the year in
12 which such date of enactment occurs, reduce
13 the amount calculated under subparagraph
14 (A)(ii) each year, on a cumulative basis, by the
15 average percentage decrease in the annual kilo-
16 watt hour production for the 7-year period de-
17 scribed in subparagraph (A)(ii) with such cu-
18 mulative sum not to exceed 30 percent.

19 “(6) INCREMENTAL HYDROPOWER.—The term
20 ‘incremental hydropower’ means additional energy
21 generated as a result of efficiency improvements or
22 capacity additions made on or after January 1,
23 2001, or the effective date of an existing applicable
24 State renewable portfolio standard program at a hy-
25 droelectric facility that was placed in service before

1 that date. The term does not include additional en-
2 ergy generated as a result of operational changes not
3 directly associated with efficiency improvements or
4 capacity additions. Efficiency improvements and ca-
5 pacity additions shall be measured on the basis of
6 the same water flow information used to determine
7 a historic average annual generation baseline for the
8 hydroelectric facility and certified by the Secretary
9 or the Federal Energy Regulatory Commission.

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

12 “(A) electric energy generated at a facility
13 (including a distributed generation facility)
14 placed in service on or after January 1, 2001,
15 from—

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

18 “(ii) biomass (as defined in section
19 203(b) of the Energy Policy Act of 2005
20 (42 U.S.C. 15852(b));

21 “(iii) landfill gas; or

22 “(iv) incremental hydropower; and

23 “(B) for electric energy generated at a fa-
24 cility (including a distributed generation facil-
25 ity) placed in service before January 1, 2001—

1 “(i) the additional energy above the
2 average generation during the period be-
3 ginning on January 1, 1998, and ending
4 on January 1, 2001, at the facility from—

5 “(I) solar or wind energy or
6 ocean energy;

7 “(II) biomass (as defined in sec-
8 tion 203(b) of the Energy Policy Act
9 of 2005 (42 U.S.C. 15852(b));

10 “(III) landfill gas; or

11 “(IV) incremental hydropower;

12 and

13 “(ii) incremental geothermal produc-
14 tion.

15 “(8) OCEAN ENERGY.—The term ‘ocean energy’
16 includes current, wave, tidal, and thermal energy.

17 “(j) SUNSET.—This section expires on December 31,
18 2030.”.

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

“Sec. 610. Federal renewable portfolio standard.”.