

Calendar No. 576111TH CONGRESS
2^D SESSION**S. 3813**

To amend the Public Utility Regulatory Policies Act of 1978 to establish a Federal renewable electricity standard, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2010

Mr. BINGAMAN (for himself, Mr. BROWNBACK, Mr. DORGAN, Ms. COLLINS, Mr. UDALL of New Mexico, Mr. ENSIGN, Mr. UDALL of Colorado, Ms. CANTWELL, Mr. JOHNSON, Mrs. SHAHEEN, Mr. HARKIN, Mr. REID, Mr. BENNET, Mrs. MURRAY, Mr. BEGICH, Mr. FRANKEN, Mr. BURRIS, Mr. KAUFMAN, Mrs. FEINSTEIN, Mr. KERRY, Mr. DURBIN, Mr. CARDIN, Mr. GRASSLEY, and Ms. STABENOW) introduced the following bill; which was read the first time

SEPTEMBER 22, 2010

Read the second time and placed on the calendar

A BILL

To amend the Public Utility Regulatory Policies Act of 1978 to establish a Federal renewable electricity standard, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Renewable Electricity
3 Promotion Act of 2010”.

4 **SEC. 2. FEDERAL RENEWABLE ELECTRICITY STANDARD.**

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

8 **“SEC. 610. FEDERAL RENEWABLE ELECTRICITY STANDARD.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) AFFILIATE.—The term ‘affiliate’ when
11 used with respect to a person, means another person
12 that directly or indirectly owns or controls, is owned
13 or controlled by, or is under common ownership or
14 control with, such person, as determined under regu-
15 lations issued by the Secretary.

16 “(2) BASE QUANTITY OF ELECTRICITY.—

17 “(A) IN GENERAL.—The term ‘base quan-
18 tity of electricity’ means the total quantity of
19 electricity sold by an electric utility to electric
20 consumers in a calendar year.

21 “(B) EXCLUSIONS.—The term ‘base quan-
22 tity of electricity’ does not include—

23 “(i) electricity generated by a hydro-
24 electric facility (including a pumped stor-
25 age facility but excluding qualified hydro-
26 power) owned by an electric utility or sold

1 under contract or rate order to an electric
2 utility to meet the needs of the retail cus-
3 tomers of the utility;

4 “(ii) the quantity of electricity gen-
5 erated by a fossil-fuel facility that is equal
6 to the proportion of greenhouse gases pro-
7 duced by such a unit that are captured
8 and geologically sequestered; or

9 “(iii)(I) electricity generated by a nu-
10 clear generating unit placed in service after
11 the date of enactment of this section; or

12 “(II) additional energy generated by
13 an existing nuclear facility as a result of
14 efficiency improvements or capacity addi-
15 tions made on or after the date of enact-
16 ment of this section.

17 “(3) BIOMASS.—The term ‘biomass’ has the
18 meaning given the term in section 203(b) of the En-
19 ergy Policy Act of 2005 (42 U.S.C. 15852(b)).

20 “(4) DISTRIBUTED GENERATION FACILITY.—
21 The term ‘distributed generation facility’ means a
22 facility at or near a customer site that provides elec-
23 tric energy to 1 or more customers for purposes
24 other than resale other than to a utility through a
25 net metering arrangement.

1 “(5) GEOTHERMAL ENERGY.—The term ‘geo-
2 thermal energy’ means energy derived from a geo-
3 thermal deposit (within the meaning of section
4 613(e)(2) of the Internal Revenue Code of 1986).

5 “(6) INCREMENTAL COST OF COMPLIANCE.—

6 “(A) IN GENERAL .—The term ‘incre-
7 mental cost of compliance’ means—

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

11 “(I) generate renewable energy
12 eligible for Federal renewable energy
13 credits;

14 “(II) acquire Federal renewable
15 energy credits; or

16 “(III) make alternative compli-
17 ance payments in order to comply
18 with the requirements of subsection
19 (b); less

20 “(ii)(I) the costs the electric utility
21 would have incurred to serve all of the re-
22 tail customers of that electric utility in
23 that year to generate or acquire additional
24 electricity not eligible for renewable energy

1 credits if the requirements of subsection
2 (b) did not apply to the electric utility; and

3 “(II) the costs of compliance with any
4 comparable State renewable requirement.

5 “(B) COST OF ELECTRICITY.—In calcu-
6 lating the incremental cost of compliance of an
7 electric utility under this section, the Secretary
8 shall take into account the reduction, if any, on
9 the cost of electricity generated with fossil fuels
10 associated with increased reliance on renewable
11 electric energy generation.

12 “(7) INCREMENTAL GEOTHERMAL PRODUC-
13 TION.—

14 “(A) IN GENERAL.—The term ‘incremental
15 geothermal production’ means, for any year, the
16 excess of—

17 “(i) the total kilowatt hours of elec-
18 tricity produced from a facility (including a
19 distributed generation facility) using geo-
20 thermal energy; over

21 “(ii) the average number of kilowatt
22 hours produced annually at the facility for
23 5 of the previous 7 calendar years before
24 the date of enactment of this section after
25 eliminating the highest and the lowest kilo-

1 watt hour production years in that 7-year
2 period.

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

14 “(8) INCREMENTAL HYDROPOWER.—

15 “(A) IN GENERAL.—The term ‘incremental
16 hydropower’ means additional energy generated
17 as a result of efficiency improvements or capac-
18 ity additions made on or after January 1, 1992.

19 “(B) EXCLUSION.—The term ‘incremental
20 hydropower’ does not include additional energy
21 generated as a result of operational changes not
22 directly associated with efficiency improvements
23 or capacity additions.

24 “(C) MEASUREMENT AND CERTIFI-
25 CATION.—Efficiency improvements and capacity

1 additions referred to in subparagraph (A) shall
2 be—

3 “(i) measured on the basis of the
4 same water flow information used to deter-
5 mine a historic average annual generation
6 baseline for the hydroelectric facility; and

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

9 “(9) INDIAN LAND.—The term ‘Indian land’
10 has the meaning given the term in section 2601 of
11 the Energy Policy Act of 1992 (25 U.S.C. 3501).

12 “(10) QUALIFIED HYDROPOWER.—

13 “(A) IN GENERAL.—The term ‘qualified
14 hydropower’ means—

15 “(i) incremental hydropower;

16 “(ii) additions of capacity made on or
17 after January 1, 2001, or the effective
18 commencement date of an existing applica-
19 ble State renewable electricity standard
20 program at an existing nonhydroelectric
21 dam, if—

22 “(I) the hydroelectric project in-
23 stalled on the nonhydroelectric dam—

24 “(aa) is licensed by the Fed-
25 eral Energy Regulatory Commis-

1 sion, or is exempt from licensing,
2 and is in compliance with the
3 terms and conditions of the li-
4 cense or exemption; and

5 “(bb) meets all other appli-
6 cable environmental, licensing,
7 and regulatory requirements, in-
8 cluding applicable fish passage
9 requirements;

10 “(II) the nonhydroelectric dam—

11 “(aa) was placed in service
12 before the date of enactment of
13 this section;

14 “(bb) was operated for flood
15 control, navigation, or water sup-
16 ply purposes; and

17 “(cc) did not produce hydro-
18 electric power as of the date of
19 enactment of this section; and

20 “(III) the hydroelectric project is
21 operated so that the water surface ele-
22 vation at any given location and time
23 that would have occurred in the ab-
24 sence of the hydroelectric project is
25 maintained, subject to any license re-

1 requirements imposed under applicable
2 law that change the water surface ele-
3 vation for the purpose of improving
4 the environmental quality of the af-
5 fected waterway, as certified by the
6 Federal Energy Regulatory Commis-
7 sion; and

8 “(iii) in the case of the State of Alas-
9 ka—

10 “(I) energy generated by a small
11 hydroelectric facility that produces
12 less than 50 megawatts;

13 “(II) energy from pumped stor-
14 age; and

15 “(III) energy from a lake tap.

16 “(B) STANDARDS.—Nothing in this para-
17 graph or the application of this paragraph shall
18 affect the standards under which the Federal
19 Energy Regulatory Commission issues licenses
20 for and regulates hydropower projects under
21 part I of the Federal Power Act (16 U.S.C.
22 791a et seq.).

23 “(11) QUALIFIED WASTE-TO-ENERGY.—The
24 term ‘qualified waste-to-energy’ means energy from
25 the combustion of post-recycled municipal solid

1 waste, or from the gasification or pyrolyzation of
2 such waste and the combustion of the resulting gas
3 at the same facility, if the owner or operator of the
4 facility generating electricity from the energy pro-
5 vides to the Commission, on an annual basis—

6 “(A) a certification that the facility is in
7 compliance with all applicable Federal and
8 State environmental permits;

9 “(B) in the case of a facility that com-
10 mences operation before the date of enactment
11 of this section, a certification that the facility
12 meets emissions standards promulgated under
13 section 112 or 129 of the Clean Air Act (42
14 U.S.C. 7412, 7429) that apply as of the date
15 of enactment of this section to new facilities
16 within the relevant source category; and

17 “(C) in the case of the combustion,
18 pyrolyzation, or gasification of municipal solid
19 waste, a certification that each local govern-
20 ment unit from which such waste originates op-
21 erates, participates in the operation of, con-
22 tracts for, or otherwise provides for, recycling
23 services for residents of the local government
24 unit.

1 “(12) RENEWABLE ENERGY.—The term ‘renew-
2 able energy’ means electric energy generated at a fa-
3 cility (including a distributed generation facility)
4 from—

5 “(A) solar, wind, or geothermal energy or
6 ocean energy;

7 “(B) biomass;

8 “(C) landfill gas;

9 “(D) qualified hydropower;

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

14 “(F) incremental geothermal production;

15 “(G) coal-mined methane;

16 “(H) qualified waste-to-energy; or

17 “(I) another renewable energy source
18 based on innovative technology, as determined
19 by the Secretary through rulemaking.

20 “(b) RENEWABLE ENERGY AND ENERGY EFFI-
21 CIENCY REQUIREMENT.—

22 “(1) REQUIREMENT.—

23 “(A) IN GENERAL.—Subject to subpara-
24 graph (B), each electric utility that sells elec-
25 tricity to electric consumers for a purpose other

1 than resale shall obtain a percentage of the
 2 base quantity of electricity the electric utility
 3 sells to electric consumers in any calendar year
 4 from renewable energy or energy efficiency.

5 “(B) PERCENTAGE.—Except as provided
 6 in section 611, the percentage obtained in a cal-
 7 endar year under subparagraph (A) shall not be
 8 less than the amount specified in the following
 9 table:

“Calendar year:	Minimum annual percentage:
2012 through 2013	3.0
2014 through 2016	6.0
2017 through 2018	9.0
2019 through 2020	12.0
2021 through 2039	15.0

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

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

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

20 “(C) making alternative compliance pay-
 21 ments to the Secretary at the rate of 2.1 cents
 22 per kilowatt hour (as adjusted for inflation

1 under subsection (g)) if the electric utility does
2 not elect to petition the Secretary to waive the
3 requirements under subsection (d)(3)(C); or

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

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

11 “(c) FEDERAL RENEWABLE ENERGY AND ENERGY
12 EFFICIENCY CREDIT TRADING PROGRAMS.—

13 “(1) IN GENERAL.—Not later than January 1,
14 2012, the Secretary shall establish a Federal renew-
15 able energy credit trading program, and a Federal
16 energy efficiency credit trading program, under
17 which electric utilities shall submit to the Secretary
18 Federal renewable energy credits and Federal energy
19 efficiency credits to certify the compliance of the
20 electric utilities with subsection (b)(1).

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

23 “(A) issue renewable energy credits to gen-
24 erators of electric energy from renewable en-
25 ergy, regardless of whether the energy is trans-

1 mitted over the national interstate transmission
2 system;

3 “(B) to the extent that renewable sources
4 of electricity are used in combination with other
5 sources of energy, issue credits only to the ex-
6 tent that the electricity generated is from re-
7 newable resources;

8 “(C) issue renewable energy credits to elec-
9 tric utilities associated with State renewable
10 electricity standard compliance mechanisms
11 pursuant to subsection (h);

12 “(D) issue energy efficiency credits pursu-
13 ant to subsection (i);

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

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

1 “(G) allow triple credits for generation of
2 energy from algae;

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

13 “(I) issue tradeable renewable energy cred-
14 its for the useful electric and thermal output
15 from a facility that produces the output from
16 biomass, using a system under which—

17 “(i) in the case of efficiency that is
18 less than 50 percent, 1 renewable energy
19 credit is awarded;

20 “(ii) in the case of efficiency that is
21 50 percent or more but less than 70 per-
22 cent, 1.1 renewable energy credits are
23 awarded for the same unit output;

24 “(iii) in the case of efficiency that is
25 70 percent or more but less than 90 per-

1 cent, 1.25 renewable energy credits are
2 awarded for the same unit output; and

3 “(iv) in the case of efficiency that is
4 90 percent or more, 1.5 renewable energy
5 credits are awarded for the same unit out-
6 put.

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

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

17 “(5) DELEGATION OF MARKET FUNCTION.—

18 “(A) IN GENERAL.—The Secretary may
19 delegate to—

20 “(i) an appropriate market-making
21 entity the administration of a national re-
22 newable energy credit market and a na-
23 tional energy efficiency credit market for
24 purposes of creating a transparent national
25 market for the sale or trade of renewable

1 energy credits and energy efficiency cred-
2 its; and

3 “(ii) regional entities the tracking of
4 dispatch of renewable generation.

5 “(B) ADMINISTRATION.—Any delegation
6 under subparagraph (A) shall ensure that the
7 tracking and reporting of information con-
8 cerning the dispatch of renewable generation is
9 transparent, verifiable, and independent of any
10 generation or load interests with obligations
11 under this section. .

12 “(d) ENFORCEMENT.—

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

16 “(2) AMOUNT OF PENALTY.—The amount of
17 the civil penalty shall be equal to the product ob-
18 tained by multiplying—

19 “(A) the number of kilowatt-hours of elec-
20 tric energy sold to electric consumers in viola-
21 tion of subsection (b); by

22 “(B) 200 percent of the value of the alter-
23 native compliance payment, as adjusted for in-
24 flation under subsection (g).

25 “(3) MITIGATION OR WAIVER.—

1 “(A) PENALTY.—

2 “(i) IN GENERAL.—The Secretary
3 may mitigate or waive a civil penalty under
4 this subsection if the electric utility is un-
5 able to comply with subsection (b) due to
6 a reason outside of the reasonable control
7 of the electric utility.

8 “(ii) AMOUNT.—The Secretary shall
9 reduce the amount of any penalty deter-
10 mined under paragraph (2) by the amount
11 paid by the electric utility to a State for
12 failure to comply with the requirement of
13 a State renewable energy program if the
14 State requirement is greater than the ap-
15 plicable requirement of subsection (b).

16 “(B) REQUIREMENT.—The Secretary may
17 waive the requirements of subsection (b) for a
18 period of up to 5 years with respect to an elec-
19 tric utility if the Secretary determines that the
20 electric utility cannot meet the requirements
21 due to a hurricane, tornado, fire, flood, earth-
22 quake, ice storm, or other natural disaster or
23 act of God beyond the reasonable control of the
24 utility.

1 “(C) RATEPAYER PROTECTION.—Effective
2 beginning June 1, 2010, and not later than
3 June 1 of each year thereafter, an electric util-
4 ity may petition the Secretary to waive, for the
5 following compliance year, all or part of the re-
6 quirements of subsection (b) in order to limit
7 the rate impact of the incremental cost of com-
8 pliance of the electric utility to not more than
9 4 percent per retail customer in any year.

10 “(D) VARIANCE.—A State public utility
11 commission or electric utility may submit an
12 application to the Secretary that requests a
13 variance from the requirements of subsection
14 (b) for 1 or more calendar years (including sus-
15 pension or reduction of the requirements) on
16 the basis of transmission constraints preventing
17 delivery of service.

18 “(4) PROCEDURE FOR ASSESSING PENALTY.—
19 The Secretary shall assess a civil penalty under this
20 subsection in accordance with the procedures pre-
21 scribed by section 333(d) of the Energy Policy and
22 Conservation Act (42 U.S.C. 6303(d)).

23 “(e) ALTERNATIVE COMPLIANCE PAYMENTS.—

24 “(1) IN GENERAL.—An electric utility may sat-
25 isfy the requirements of subsection (b), in whole or

1 in part, by submitting in accordance with this sub-
2 section, in lieu of each Federal renewable electricity
3 credit or megawatt hour of demonstrated total an-
4 nual electricity savings that would otherwise be due,
5 a payment equal to the amount required under sub-
6 section (b) in accordance with such regulations as
7 the Secretary may promulgate.

8 “(2) PAYMENT TO STATE FUNDS.—An amount
9 equal to 75 percent of the payments made under
10 this subsection shall be made directly to the State in
11 which the electric utility is located, if the payments
12 are deposited directly into a fund within the treasury
13 of the State for use in accordance with paragraph
14 (3).

15 “(3) USE OF GRANTS.—The Governor of any
16 State may expend amounts in a State renewable en-
17 ergy escrow account solely for purposes of—

18 “(A) increasing the quantity of electric en-
19 ergy produced from a renewable energy source
20 in the State, including nuclear and advanced
21 coal technologies for carbon capture and seques-
22 tration;

23 “(B) promoting the deployment and use of
24 electric drive vehicles in the State, including the

1 development of electric drive vehicles and bat-
2 teries; and

3 “(C) offsetting the costs of carrying out
4 this section paid by electric consumers in the
5 State through—

6 “(i) direct grants to electric con-
7 sumers; or

8 “(ii) energy efficiency investments.

9 “(4) INFORMATION AND REPORTS.—As a condi-
10 tion of providing payments to a State under this
11 subsection, the Secretary may require the Governor
12 to keep such accounts or records, and furnish such
13 information and reports, as the Secretary determines
14 are necessary and appropriate for determining com-
15 pliance with this subsection.

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

18 “(1) that sold less than 4,000,000 megawatt-
19 hours of electric energy to electric consumers during
20 the preceding calendar year, except that sales to an
21 affiliate, lessee, or tenant of the electric utility shall
22 not be treated as sales to electric consumers under
23 this paragraph; or

24 “(2) in Hawaii.

1 “(g) INFLATION ADJUSTMENT.—Not later than De-
2 cember 31 of each year beginning in 2013, the Secretary
3 shall adjust for inflation the rate of the alternative compli-
4 ance payment under subsection (b)(2)(C).

5 “(h) STATE PROGRAMS.—

6 “(1) IN GENERAL.—Subject to paragraph (2),
7 nothing in this section diminishes any authority of
8 a State or political subdivision of a State to adopt
9 or enforce any law or regulation respecting renew-
10 able energy or energy efficiency, or the regulation of
11 electric utilities,.

12 “(2) COMPLIANCE.—Except as provided in sub-
13 section (d)(3), no such law or regulation shall relieve
14 any person of any requirement otherwise applicable
15 under this section.

16 “(3) COORDINATION.—The Secretary, in con-
17 sultation with States having such renewable energy
18 and energy efficiency programs, shall, to the max-
19 imum extent practicable, facilitate coordination be-
20 tween the Federal program and State programs.

21 “(4) REGULATIONS.—

22 “(A) IN GENERAL.—The Secretary, in con-
23 sultation with States, shall promulgate regula-
24 tions to ensure that an electric utility that is
25 subject to the requirements of this section and

1 is subject to a State renewable energy standard
2 receives renewable energy credits if—

3 “(i) the electric utility complies with
4 the State standard by generating or pur-
5 chasing renewable electric energy or renew-
6 able energy certificates or credits rep-
7 resenting renewable electric energy; or

8 “(ii) the State imposes or allows other
9 mechanisms for achieving the State stand-
10 ard, including the payment of taxes, fees,
11 surcharges, or other financial obligations.

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

15 “(i) in the case of subparagraph
16 (A)(i), the quantity of renewable energy re-
17 sulting from the generation or purchase by
18 the electric utility of renewable energy; and

19 “(ii) in the case of subparagraph
20 (A)(ii), the pro rata share of the electric
21 utility, based on the contributions to the
22 mechanism made by the electric utility or
23 customers of the electric utility, in the
24 State, of the quantity of renewable energy
25 resulting from those mechanisms.

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

8 “(i) ENERGY EFFICIENCY CREDITS.—

9 “(1) DEFINITIONS.—In this subsection:

10 “(A) CUSTOMER FACILITY SAVINGS.—The
11 term ‘customer facility savings’ means a reduc-
12 tion in the consumption of end-use electricity at
13 a facility of an end-use consumer of electricity
14 served by an electric utility, as compared to—

15 “(i) consumption at the facility during
16 a base year, taking into account reductions
17 attributable to causes other than energy ef-
18 ficiency investments (such as economic
19 downturns, reductions in customer base,
20 favorable weather conditions, or other such
21 causes); or

22 “(ii) in the case of new equipment (re-
23 gardless of whether the new equipment re-
24 places existing equipment at the end of the
25 useful life of the existing equipment), con-

1 sumption by similar equipment of average
2 efficiency available for purchase at the
3 time that new equipment is acquired.

4 “(B) ELECTRICITY SAVINGS.—The term
5 ‘electricity savings’ means—

6 “(i) customer facility savings of elec-
7 tricity consumption adjusted to reflect any
8 associated increase in fuel consumption at
9 the facility;

10 “(ii) reductions in distribution system
11 losses of electricity achieved by a retail
12 electricity distributor, as compared to
13 losses attributable to new or replacement
14 distribution system equipment of average
15 efficiency (as defined by the Secretary by
16 regulation); and

17 “(iii) the output of new combined heat
18 and power systems, to the extent provided
19 under paragraph (5).

20 “(C) QUALIFIED ELECTRICITY SAVINGS.—
21 The term ‘qualified electricity savings’ means
22 electricity saving that meet the measurement
23 and verification requirements of paragraph (4).

24 “(2) PETITION.—On petition by the Governor
25 of a State or, in the case of the power service area

1 of the Tennessee Valley Authority, the Board of Di-
2 rectors of the Tennessee Valley Authority, the Sec-
3 retary shall allow up to 26.67 percent of the require-
4 ments of an electric utility under subsection (b)(1)
5 associated with the sales of electricity of the utility
6 in the State to be met by submitting Federal energy
7 efficiency credits issued pursuant to this subsection.

8 “(3) ISSUANCE OF ENERGY EFFICIENCY CRED-
9 ITS.—

10 “(A) IN GENERAL.—The Secretary shall
11 issue energy efficiency credits for qualified elec-
12 tricity savings achieved in States described in
13 paragraph (2) in accordance with this sub-
14 section.

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

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

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

1 “(I) the measures used to achieve
2 the qualified electricity savings were
3 installed or placed in operation by the
4 entity seeking the credit; and

5 “(II) an electric utility eligible to
6 receive efficiency did not pay a sub-
7 stantial portion of the cost of achiev-
8 ing the qualified electricity savings
9 (unless the utility has waived any en-
10 titlement to the credit).

11 “(C) STANDARDS.—No credits shall be
12 issued for electricity savings achieved as a re-
13 sult of compliance with a national, State, or
14 local building, equipment, or appliance effi-
15 ciency standard.

16 “(4) MEASUREMENT AND VERIFICATION OF
17 ELECTRICITY SAVINGS.—Not later than January
18 2010, the Secretary shall promulgate regulations re-
19 garding the measurement and verification of elec-
20 tricity savings under this subsection, including regu-
21 lations covering—

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

1 “(i) specify the types of energy effi-
2 ciency and energy conservation that will be
3 eligible for the credits;

4 “(ii) require that energy consumption
5 for customer facilities or portions of facili-
6 ties in the applicable base and current
7 years be adjusted, as appropriate, to ac-
8 count for changes in weather, level of pro-
9 duction, and building area;

10 “(iii) account for the useful life of
11 electricity savings measures;

12 “(iv) include specified electricity sav-
13 ings values for specific, commonly-used ef-
14 ficiency measures; and

15 “(v) exclude electricity savings that—

16 “(I) are not properly attributable
17 to measures carried out by the entity
18 seeking the credit;

19 “(II) have already been credited
20 under this section to another entity;

21 or

22 “(III) do not result from actions
23 not intended to achieve electricity sav-
24 ings;

1 “(B) procedures and standards for third-
2 party verification of reported electricity savings;
3 and

4 “(C) such requirements for information,
5 reports, and access to facilities as may be nec-
6 essary to carry out this subsection.

7 “(5) COMBINED HEAT AND POWER.—Under
8 regulations promulgated by the Secretary, the incre-
9 ment of electricity output of a new combined heat
10 and power system that is attributable to the higher
11 efficiency of the combined system (as compared to
12 the efficiency of separate production of the electric
13 and thermal outputs), shall be considered electricity
14 savings under this subsection.

15 “(j) BIOMASS HARVESTING AND SUSTAINABILITY.—
16 The provisions of this section relating to biomass shall be
17 administered in accordance with section 203(e) of the En-
18 ergy Policy Act of 2005 (42 U.S.C. 15852(e)).

19 “(k) LOANS FOR PROJECTS TO COMPLY WITH FED-
20 ERAL RENEWABLE ELECTRICITY STANDARD.—

21 “(1) PURPOSES.—The purposes of this sub-
22 section are—

23 “(A) to reduce the cost incurred by electric
24 utilities in complying with the requirements of
25 this section; and

1 “(B) to minimize the impact of the re-
2 quirements on electricity rates for consumers.

3 “(2) LOANS.—The Secretary shall make loans
4 available to electric utilities to carry out qualified
5 projects approved by the Secretary to comply with
6 the requirements of this section.

7 “(3) QUALIFIED PROJECTS.—

8 “(A) IN GENERAL.—A loan may be made
9 under this subsection for a project—

10 “(i) to construct a renewable energy
11 generation facility;

12 “(ii) to install an energy efficiency or
13 electricity demand reduction technology; or

14 “(iii) to carry out any other project
15 approved by the Secretary that the Sec-
16 retary determines is consistent with the
17 purposes of this subsection.

18 “(B) DISAPPROVAL.—The Secretary may
19 disapprove an application for a loan for a
20 project under this subsection if the Secretary
21 determines that—

22 “(i) the revenues generated under the
23 project are unlikely to be sufficient to
24 cover the repayment obligations of the pro-
25 posed loan; or

1 “(ii) the project is not otherwise con-
2 sistent with the purposes of this sub-
3 section.

4 “(4) TERMS.—A loan made by the Secretary to
5 an electric utility under this subsection shall—

6 “(A) be for a term of not to exceed 30
7 years; and

8 “(B) bear an annual interest rate that is
9 50 basis points more than the Federal funds
10 rate established by the Board of Governors of
11 the Federal Reserve System.

12 “(5) PRIORITY.—Notwithstanding any other
13 provision of law, the debt to the Federal Government
14 under a loan made to an electric utility under this
15 subsection shall have priority in any case in which
16 the electric utility files for bankruptcy protection
17 under title 11, United States Code.

18 “(6) AUTHORIZATION OF APPROPRIATIONS.—
19 There are authorized to be appropriated such sums
20 as are necessary to carry out this subsection.

21 “(l) RECONSIDERATION.—

22 “(1) REVIEW.—

23 “(A) IN GENERAL.—Not later than Janu-
24 ary 15, 2017, and every 5 years thereafter, the
25 Secretary shall review and make recommenda-

1 tions to Congress on the program established
2 under this section.

3 “(B) ANALYSIS.—The review shall analyze
4 whether—

5 “(i) the program established under
6 this section has contributed to an economi-
7 cally harmful increase in electricity rates in
8 regions of the United States;

9 “(ii) the program has resulted in net
10 economic benefits for the United States;
11 and

12 “(iii) new technologies and clean, re-
13 newable energy sources will advance the
14 purposes of this section.

15 “(2) RECOMMENDATIONS.—The Secretary shall
16 submit to Congress recommendations on whether—

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

20 “(B) the percentage of renewable elec-
21 tricity required under subsection (b)(1) should
22 be increased or decreased; and

23 “(C) the definition of ‘renewable energy’
24 should be expanded to reflect advances in tech-

1 nology or previously unavailable sources of
2 clean or renewable energy.

3 “(3) REPORT.—Not later than January 15,
4 2017, the Secretary shall submit to Congress a re-
5 port that describes any recommendations of the Sec-
6 retary on changes to the program established under
7 this section.

8 “(m) REGULATIONS.—

9 “(1) IN GENERAL.—Not later than 1 year after
10 the date of enactment of this section, the Secretary
11 shall promulgate interim final rules establishing reg-
12 ulations implementing this section.

13 “(2) INFORMATION COLLECTION.—Chapter 35
14 of title 44, United States Code, shall not apply to
15 any information collection requirement necessary for
16 the implementation of the program established by
17 this section.

18 “(n) TERMINATION OF AUTHORITY.—This section
19 and the authority provided by this section terminate on
20 December 31, 2039.”.

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

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

1 **SEC. 3. FEDERAL PURCHASE REQUIREMENT AMENDMENTS.**

2 Section 203 of the Energy Policy Act of 2005 (42
3 U.S.C. 15852) is amended—

4 (1) by striking subsection (b) and inserting the
5 following:

6 “(b) DEFINITIONS.—In this section:

7 “(1) BIOMASS.—The term ‘biomass’ means the
8 following types of nonhazardous organic materials:

9 “(A) Residues and byproducts from milled
10 logs.

11 “(B) Wood, paper products that are not
12 commonly recyclable, and vegetation (including
13 trees and trimmings, yard waste, pallets, rail-
14 road ties, crates, and solid-wood manufacturing
15 and construction debris), if diverted from or
16 separated from other waste out of a municipal
17 waste stream.

18 “(C) Hazard trees, trimmings, and brush
19 that are necessary to remove in order to main-
20 tain a utility right-of-way or a public road (not
21 including any unpaved road within Federal
22 land).

23 “(D) Trees, trimmings, and brush har-
24 vested from the immediate vicinity of any build-
25 ing, campground, or other structure in wildfire-

1 prone areas to reduce the risk to the structure
2 or campground or to human life from wildfires.

3 “(E) Invasive species (as defined in Execu-
4 tive Order 13112 (42 U.S.C. 4321 note; relat-
5 ing to invasive species)) removed to control or
6 eradicate the invasive species.

7 “(F) Animal waste and animal byproducts
8 (including biogas and any solid produced by
9 micro-organisms).

10 “(G) Food waste.

11 “(H) Algae.

12 “(I) Slash, brush, trees, and other vegeta-
13 tion that is harvested from non-Federal land or
14 Indian land—

15 “(i) that is, at the time of harvest—

16 “(I) naturally regenerated forest
17 land;

18 “(II) forest land that was planted
19 for the purpose of restoring land to a
20 naturally regenerated forest; or

21 “(III) if harvested in quantities
22 and through practices that maintain
23 or contribute toward the restoration
24 of the species, ecological systems, and
25 ecological communities for which the

1 conservation forest land was identi-
2 fied, conservation forest land; or

3 “(ii) that is—

4 “(I) at the time of harvest, plant-
5 ed forest land; and

6 “(II) on the date of enactment of
7 this section, cropland (including fallow
8 land), pastureland, or planted forest
9 land.

10 “(J) Crops, crop byproducts, and crop resi-
11 dues from non-Federal land or Indian land that
12 is—

13 “(i) at the time of harvest, not forest
14 land; and

15 “(ii) on the date of enactment of this
16 section—

17 “(I) cropland (including fallow
18 land and not including planted forest
19 land); or

20 “(II) pastureland.

21 “(K) If harvested from Federal land in ac-
22 cordance with applicable law and land manage-
23 ment plans and in quantities and through prac-
24 tices that maintain or contribute toward the
25 restoration of ecological sustainability—

1 “(i) slash; and

2 “(ii) brush and trees that are byprod-
3 ucts of ecological restoration, disease or in-
4 sect infestation control, or hazardous fuels
5 reduction treatments and—

6 “(I) are from stands that—

7 “(aa) were killed by an in-
8 sect or disease epidemic or a nat-
9 ural disaster; and

10 “(bb) do not meet the utili-
11 zation standards for sawtimber;
12 or

13 “(II) do not exceed the minimum
14 size standards for sawtimber.

15 “(2) CONSERVATION FOREST LAND.—

16 “(A) IN GENERAL.—The term ‘conserva-
17 tion forest land’ means forest land that con-
18 tains a species, or includes all or part of an eco-
19 logical system or community, that is at risk of
20 extinction or elimination within a State or glob-
21 ally.

22 “(B) IDENTIFICATION.—Conservation for-
23 est land shall be identified based on the best
24 available science and data by any of—

1 “(i) the State in which the land is lo-
2 cated, unless the land is under the jurisdic-
3 tion of an Indian tribe;

4 “(ii) an Indian tribe with jurisdiction
5 over the land; or

6 “(iii) in consultation with the State in
7 which the land is located or the Indian
8 tribe with jurisdiction over the land—

9 “(I) the Secretary of Agriculture;

10 or

11 “(II) the Secretary of the Inte-
12 rior.

13 “(C) EXCEPTIONS.—A tract of conserva-
14 tion forest land may not be removed from con-
15 servation forest land status under this section
16 as a result of land management practices on the
17 tract that—

18 “(i) occurred on or after the date of
19 enactment of this subparagraph; and

20 “(ii) contributed toward the elimi-
21 nation of the species, or all or part of an
22 ecological system or ecological community,
23 for which the land was identified as con-
24 servation forest land.

25 “(3) FEDERAL LAND.—

1 “(A) IN GENERAL.—The term ‘Federal
2 land’ means—

3 “(i) National Forest System land; and

4 “(ii) public lands (as defined in sec-
5 tion 103 of the Federal Land Policy and
6 Management Act of 1976 (43 U.S.C.
7 1702)).

8 “(B) EXCLUSIONS.—

9 “(i) IN GENERAL.—The term ‘Federal
10 land’ does not include—

11 “(I) any area designated by Con-
12 gress to be administered for conserva-
13 tion purposes; or

14 “(II) a National Monument pro-
15 claimed by the President.

16 “(ii) OLD GROWTH OR LATE SUCCES-
17 SIONAL FOREST STANDS.—The term ‘Fed-
18 eral land’ does not include an old growth
19 or late successional forest stand unless bio-
20 mass from the stand does not exceed the
21 minimum size standards for sawtimber and
22 is a byproduct of an ecological restoration
23 treatment that fully maintains, or contrib-
24 utes toward the restoration of, the struc-
25 ture and composition of an old growth for-

1 est stand in accordance with the old
2 growth conditions characteristic of the for-
3 est type and retains the large trees con-
4 tributing to old growth structure.

5 “(4) INDIAN LAND.—The term ‘Indian land’
6 has the meaning given the term ‘Indian country’ in
7 section 1151 of title 18, United States Code.

8 “(5) INDIAN TRIBE.—The term ‘Indian tribe’
9 has the meaning given the term in section 4 of the
10 Indian Self-Determination and Education Assistance
11 Act (25 U.S.C. 450b).

12 “(6) NON-FEDERAL LAND.—The term ‘non-
13 Federal land’ means land that is not owned by the
14 Federal Government.

15 “(7) RENEWABLE ENERGY.—The term ‘renew-
16 able energy’ means energy generated from solar,
17 wind, biomass, landfill gas, ocean (including tidal,
18 wave, current, and thermal), geothermal, municipal
19 solid waste, or new hydroelectric generation capacity
20 achieved from increased efficiency or additions of
21 new capacity at an existing hydroelectric project.

22 “(8) SECRETARY CONCERNED.—The term ‘Sec-
23 retary concerned’ means—

24 “(A) the Secretary of Agriculture, with re-
25 gard to—

1 “(i) National Forest System land; and

2 “(ii) except as provided by subpara-
3 graph (B), non-Federal land; and

4 “(B) the Secretary of the Interior, with re-
5 gard to—

6 “(i) public lands (as defined in section
7 103 of the Federal Land Policy and Man-
8 agement Act of 1976 (43 U.S.C. 1702));
9 and

10 “(ii) Indian land.”; and

11 (2) by adding at the end the following:

12 “(e) BIOMASS HARVESTING AND SUSTAINABILITY.—

13 “(1) IN GENERAL.—The Secretaries concerned
14 shall administer the provisions covered by subsection
15 (b)(1) relating to the harvesting of biomass from
16 Federal land and forest land.

17 “(2) INTER-AGENCY BIOMASS SUSTAINABILITY
18 STUDY.—

19 “(A) IN GENERAL.—The Secretary, in con-
20 sultation with the Secretary of Agriculture, the
21 Secretary of the Interior, and the Administrator
22 of the Environmental Protection Agency, shall
23 conduct a study that assesses the impacts of
24 biomass harvesting for energy production on—

1 “(i) landscape-level water quality, soil
2 productivity, wildlife habitat, and biodiver-
3 sity; and

4 “(ii) conservation forest land.

5 “(B) TIMING.—The Secretary shall—

6 “(i) complete the study required
7 under this paragraph not later than 5
8 years after the date of enactment of this
9 subsection; and

10 “(ii) update the study not later than
11 every 5 years thereafter.

12 “(C) BASIS.—The Secretary shall base the
13 study on the best available data and science.

14 “(D) RECOMMENDATIONS.—The Secretary
15 shall include in the study such recommenda-
16 tions as are appropriate to reduce the impacts
17 described in subparagraph (A).

18 “(E) PUBLIC PARTICIPATION AND AVAIL-
19 ABILITY.—In carrying out this paragraph, the
20 Secretary shall—

21 “(i) consult with States, Indian tribes,
22 and other interested stakeholders;

23 “(ii) make available, and seek public
24 comment on, a draft version of the study
25 results; and

- 1 “(iii) make the final study results
- 2 available to the public.”.

Calendar No. 576

11TH CONGRESS
2^D SESSION

S. 3813

A BILL

To amend the Public Utility Regulatory Policies Act of 1978 to establish a Federal renewable electricity standard, and for other purposes.

SEPTEMBER 22, 2010

Read the second time and placed on the calendar