

[DISCUSSION DRAFT]

111TH CONGRESS
1ST SESSION

H. R. _____

To [to be supplied]

IN THE HOUSE OF REPRESENTATIVES

(for himself and Mr. PLATTS) introduced the following bill; which was referred to the Committee on _____

A BILL

To [to be supplied]

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

3 **SECTION 1. SHORT TITLE.**

4 [to be supplied]

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

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

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

10 **“(a) DEFINITIONS.—**For purposes of this section:

1 “(1) AFFILIATE.—The term ‘affiliate’ when
2 used in relation to a person, means another person
3 which owns or controls, is owned or controlled by, or
4 is under common ownership or control with, such
5 person, as determined under regulations promul-
6 gated by the Secretary.

7 “(2) BIOMASS.—

8 “(A) IN GENERAL.—The term ‘biomass’
9 means each of the following:

10 “(i) Cellulosic (plant fiber) organic
11 materials from a plant that is planted for
12 the purpose of being used to produce en-
13 ergy.

14 “(ii) Nonhazardous, plant or algal
15 matter that is derived from any of the fol-
16 lowing:

17 “(I) An agricultural crop, crop
18 byproduct or residue resource.

19 “(II) Waste such as landscape or
20 right-of-way trimmings (but not in-
21 cluding municipal solid waste, recycla-
22 ble postconsumer waste paper, paint-
23 ed, treated, or pressurized wood, or
24 wood contaminated with plastic or
25 metals).

1 “(iii) Animal waste or animal byprod-
2 ucts, including products of animal waste
3 digesters.

4 “(B) BIOMASS FROM FEDERAL LANDS.—

5 “(i) COVERED MATERIALS.—With re-
6 spect to organic material removed from
7 Federal land, the term ‘biomass’ covers
8 only organic material from—

9 “(I) ecological forest restoration;

10 “(II) pre-commercial thinnings;

11 “(III) brush;

12 “(IV) mill residues; and

13 “(V) slash.

14 “(ii) EXCLUSION OF CERTAIN
15 LANDS.—Notwithstanding clause (i), mate-
16 rial or matter that would otherwise qualify
17 as biomass are not included in the term
18 ‘biomass’ if it is located on Federal land in
19 the following categories:

20 “(I) Federal land containing old
21 growth forest or late successional for-
22 est, unless the Secretary of the Inte-
23 rior or the Secretary of Agriculture
24 (whichever has administrative jurisdic-
25 tion over such land) determines that

1 the removal or organic material from
2 such land is appropriate for the appli-
3 cable forest type and maximizes the
4 retention of late-successional and
5 large and old growth trees, late suc-
6 cessional and old growth forest struc-
7 ture, and late-successional and old
8 growth forest composition.

9 “(II) Federal land on which the
10 removal of vegetation is prohibited, in-
11 cluding components of the National
12 Wilderness Preservation System.

13 “(III) Wilderness Study Areas.

14 “(IV) Inventoried Roadless
15 Areas.

16 “(V) Units of the National Land-
17 scape Conservation System.

18 “(VI) National Monuments.

19 “(3) DISTRIBUTED GENERATION FACILITY.—
20 The term ‘distributed generation facility’ means a
21 facility that—

22 “(A) generates renewable electricity other
23 than by means of combustion;

24 “(B) primarily serves 1 or more electricity
25 consumers at or near the facility site; and

1 “(C) is no larger than 2 megawatts in ca-
2 pacity.

3 “(4) FEDERAL ALTERNATIVE COMPLIANCE PAY-
4 MENT.—The term ‘Federal alternative compliance
5 payment’ means a payment, to be submitted in lieu
6 of 1 Federal renewable electricity credit, pursuant to
7 subsection (c)(3).

8 “(5) FEDERAL LAND.—The term ‘Federal land’
9 means land owned by the United States and under
10 the administrative jurisdiction of the Secretary of
11 the Interior or the Secretary of Agriculture, other
12 than land held in trust for an Indian or Indian tribe.

13 “(6) FEDERAL RENEWABLE ELECTRICITY
14 CREDIT.—The term ‘Federal renewable electricity
15 credit’ means a credit, representing one kilowatt
16 hour of renewable electricity, issued pursuant to sub-
17 section (d).

18 “(7) FUND.—The term ‘Fund’ means the Re-
19 newable Electricity Deployment Fund established
20 under subsection (f).

21 “(8) INVENTORIED ROADLESS AREA.—The
22 term ‘Inventoried Roadless Area’ means one of the
23 areas identified in the set of inventoried roadless
24 areas maps contained in the Forest Service Roadless

1 Areas Conservation, Final Environmental Impact
2 Statement, Volume 2, dated November 2000.

3 “(9) QUALIFIED HYDROPOWER.—The term
4 ‘qualified hydropower’ means—

5 “(A) electricity generated solely from in-
6 creased efficiency achieved, or additions of ca-
7 pacity made, on or after January 1, 2001 at a
8 hydroelectric facility that was placed in service
9 before that date; or

10 “(B) electricity generated from generating
11 capacity added on or after January 1, 2001 to
12 a dam that did not previously have the capacity
13 to generate electricity, provided that the Com-
14 mission certifies that—

15 “(i) the dam was placed in service be-
16 fore the date of the enactment of this sec-
17 tion and was operated for flood control,
18 navigation, or water supply purposes and
19 did not produce hydroelectric power before
20 January 1, 2001;

21 “(ii) the hydroelectric project installed
22 on the dam is licensed by the Commission
23 and meets all other applicable environ-
24 mental, licensing, and regulatory require-

1 ments, including applicable fish passage re-
2 quirements; and

3 “ (iii) the hydroelectric project in-
4 stalled on the dam is operated so that the
5 water surface elevation at any given loca-
6 tion and time that would have occurred in
7 the absence of the hydroelectric project is
8 maintained, subject to any license require-
9 ments that require changes in water sur-
10 face elevation for the purpose of improving
11 the environmental quality of the affected
12 waterway.

13 “(10) RENEWABLE ELECTRICITY.—The term
14 ‘renewable electricity’ means electricity generated
15 from a renewable energy resource.

16 “(11) RENEWABLE ENERGY RESOURCE.—The
17 term ‘renewable energy resource’ means each of the
18 following:

19 “(A) wind energy;

20 “(B) solar energy;

21 “(C) geothermal energy;

22 “(D) combustion of biomass or landfill gas;

23 “(E) qualified hydropower; or

24 “(F) marine and hydrokinetic renewable
25 energy, as that term is defined in section 632

1 of the Energy Independence and Security Act
2 of 2007 (42 U.S.C. 17211).

3 “(12) RETAIL ELECTRIC SUPPLIER.—

4 “(A) IN GENERAL.—The term ‘retail elec-
5 tric supplier’ means, for any given year, an
6 electric utility that sold not less than 1,000,000
7 megawatt hours of electric energy to electric
8 consumers for purposes other than resale dur-
9 ing the preceding calendar year.

10 “(B) INCLUSIONS AND LIMITATIONS.—For
11 purposes of determining whether an electric
12 utility qualifies as a retail electric supplier
13 under subparagraph (A)—

14 “(i) the sales of any affiliate of an
15 electric utility to electric consumers for
16 purposes other than resale shall be consid-
17 ered to be sales of such electric utility; and

18 “(ii) sales by any electric utility to a
19 parent company or to other affiliates of
20 such electric utility shall not be treated as
21 sales to electric consumers.

22 “(13) RETAIL ELECTRIC SUPPLIER’S BASE
23 AMOUNT.—The term ‘retail electric supplier’s base
24 amount’ means the total amount of electric energy
25 sold by the retail electric supplier, expressed in

1 terms of kilowatt hours, to electric customers for
2 purposes other than resale during the relevant cal-
3 endar year, excluding electricity generated by—

4 “(A) a hydroelectric facility that is not
5 qualified hydropower; or

6 “(B) combustion of municipal solid waste.

7 “(14) RETIRE AND RETIREMENT.—The terms
8 ‘retire’ and ‘retirement’ with respect to a Federal re-
9 newable electricity credit, means to disqualify such
10 credit for any subsequent use under this section, re-
11 gardless of whether the use is a sale, transfer, ex-
12 change, or submission in satisfaction of a compliance
13 obligation.

14 “(b) ESTABLISHMENT OF PROGRAM.—Not later than
15 1 year after the date of enactment of this section, the Sec-
16 retary shall, by regulation, establish a program to imple-
17 ment and enforce the requirements of this section. In es-
18 tablishing such program, the Secretary shall, to the extent
19 practicable—

20 “(1) preserve the integrity, and incorporate best
21 practices, of existing State renewable electricity pro-
22 grams;

23 “(2) rely upon existing and emerging State or
24 regional tracking systems that issue and track non-
25 Federal renewable electricity credits; and

1 “(3) cooperate with the States to facilitate co-
 2 ordination between State and Federal renewable
 3 electricity programs and to minimize administrative
 4 burdens and costs to retail electric suppliers.

5 “(c) ANNUAL COMPLIANCE REQUIREMENT.—

6 “(1) IN GENERAL.—For each of calendar years
 7 2012 through 2039, each retail electric supplier
 8 shall, not later than April 1 of the following calendar
 9 year, submit to the Secretary a quantity of Federal
 10 renewable electricity credits equal to the retail elec-
 11 tric supplier’s base amount for the calendar year
 12 multiplied by the required annual percentage set
 13 forth in paragraph (2).

14 “(2) REQUIRED ANNUAL PERCENTAGE.—For
 15 each of calendar years 2012 through 2039, the re-
 16 quired annual percentage shall be as follows:

“Calendar year	Required annual percentage
2012	6.0
2013	6.0
2014	8.5
2015	8.5
2016	11.0
2017	11.0
2018	14.0
2019	14.0
2020	17.5
2021	17.5
2022	21.0
2023	21.0
2024	23.0
2025 through 2039	25.0

1 “(3) ALTERNATIVE COMPLIANCE PAYMENTS.—

2 A retail electric supplier may satisfy the require-
3 ments of paragraph (1) in whole or in part by sub-
4 mitting in lieu of each Federal renewable electricity
5 credit, a payment equal to the lesser of—

6 “(A) 200 percent of the average market
7 value of a Federal renewable electricity credit
8 for the previous compliance year, as determined
9 by the Secretary; or

10 “(B) 5 cents, adjusted on January 1 of
11 each year following calendar year 2009 based
12 on the Gross Domestic Product Implicit Price
13 Deflator.

14 “(4) USE OF PAYMENTS.—Alternative compli-
15 ance payments submitted pursuant to paragraph (3)
16 shall be deposited in the Fund established under
17 subsection (f).

18 “(d) ISSUANCE OF FEDERAL RENEWABLE ELEC-
19 TRICITY CREDITS.—

20 “(1) CREDIT ISSUANCE.—The regulations pro-
21 mulgated under subsection (b) shall include provi-
22 sions governing the issuance, tracking, and retire-
23 ment of Federal renewable electricity credits. Except
24 as provided in paragraphs (2), (3), and (4) of this
25 subsection, the Secretary shall issue to each gener-

1 ator of renewable electricity, 1 Federal renewable
2 electricity credit for each kilowatt hour of renewable
3 electricity generated by such generator.

4 “(2) GENERATION FROM STATE RENEWABLE
5 ELECTRICITY PROGRAMS USING CENTRAL PROCURE-
6 MENT AND FROM STATE ALTERNATIVE COMPLIANCE
7 PAYMENTS.—Where renewable electricity is gen-
8 erated with the support of payments from a retail
9 electric supplier pursuant to a State renewable elec-
10 tricity program (whether through State alternative
11 compliance payments or through payments to a
12 State renewable electricity procurement fund or enti-
13 ty), the Secretary shall issue Federal renewable elec-
14 tricity credits to such retail electric supplier for the
15 proportion of the relevant renewable electricity gen-
16 eration that is attributable to the retail electric sup-
17 plier’s payments, as determined pursuant to regula-
18 tions issued by the Secretary. For any remaining
19 portion of the relevant renewable electricity genera-
20 tion, the Secretary shall issue Federal renewable
21 electricity credits to the generator, as provided in
22 paragraph (1), provided that in no event shall more
23 than 1 Federal renewable electricity credit be issued
24 for the same kilowatt hour of electricity. In deter-
25 mining how Federal renewable electricity credits will

1 be apportioned among retail electric suppliers and
2 generators in such circumstances, the Secretary
3 shall consider information and guidance furnished by
4 the relevant State or States.

5 “(3) CERTAIN POWER SALES CONTRACTS.—
6 When a generator has sold renewable electricity to
7 a retail electric supplier under a contract for power
8 from a facility placed in service before the date of
9 enactment of this section, and the contract does not
10 provide for the determination of ownership of the
11 Federal renewable electricity credits associated with
12 such generation, the Secretary shall issue such Fed-
13 eral renewable electricity credits to the retail electric
14 supplier for the duration of the contract.

15 “(4) CREDIT MULTIPLIER FOR DISTRIBUTED
16 GENERATION.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), the Secretary shall issue 3
19 Federal renewable electricity credits for each
20 kilowatt hour of renewable electricity generated
21 by a distributed generation facility.

22 “(B) ADJUSTMENT.—Except as provided
23 in subparagraph (C), not later than January 1,
24 2014, and not less frequently than every 4
25 years thereafter, the Secretary shall review the

1 effect of this paragraph and shall, as necessary,
2 reduce the number of Federal renewable elec-
3 tricity credits per kilowatt hour issued under
4 this paragraph, but not below 1, to ensure
5 that—

6 “(i) such number is no higher than
7 the Secretary determines is necessary to
8 make distributed generation facilities cost
9 competitive with other sources of renewable
10 electricity generation; and

11 “(ii) if such number is greater than 1,
12 the total quantity of Federal renewable
13 electricity credits issued for electricity from
14 distributed generation facilities in any cal-
15 endar year does not exceed 20 percent of
16 the total quantity of Federal renewable
17 electricity credits issued in that year.

18 “(C) FACILITIES PLACED IN SERVICE
19 AFTER ENACTMENT.—For any distributed gen-
20 eration facility placed in service after the date
21 of enactment of this section, subparagraph (B)
22 shall not apply for the first 10 years after date
23 of enactment. For each year during such 10-
24 year period, the Secretary shall issue the facil-
25 ity the same number of Federal renewable elec-

1 tricity credits per kilowatt hour as are issued to
2 that facility in the year in which such facility
3 is placed in service. After such 10-year period,
4 the Secretary shall issue Federal renewable en-
5 ergy credits to the facility in accordance with
6 the current multiplier as determine^{4d} pursuant
7 to subparagraph (B).

8 “(5) CREDITS BASED ON INCREMENTAL HY-
9 DROPOWER.—For purposes of this subsection, the
10 number of Federal renewable electricity credits
11 issued for qualifying hydropower described in sub-
12 section (a)(9)(A) shall be calculated—

13 “(A) based solely on the increase in aver-
14 age annual generation directly resulting from
15 the efficiency improvements or capacity addi-
16 tions described in subsection (a)(9)(A); and

17 “(B) using the same water flow informa-
18 tion used to determine a historic average an-
19 nual generation baseline for the hydroelectric
20 facility, as certified by the Secretary or by the
21 Commission.

22 “(6) GENERATION FROM MIXED RENEWABLE
23 AND NON-RENEWABLE RESOURCES.—If electricity is
24 generated using both a renewable energy resource
25 and an energy source that is not a renewable energy

1 resource (as, for example, in the case of co-firing of
2 biomass and fossil fuel), the Secretary shall issue
3 Federal renewable electricity credits based on the
4 proportion of the electricity that is attributable to
5 the renewable energy resource.

6 “(7) PROHIBITION AGAINST DOUBLE-COUNT-
7 ING.—Except as provided in paragraph (4) of this
8 subsection, the Secretary shall ensure that no more
9 than 1 Federal renewable electricity credit will be
10 issued for any kilowatt hour of renewable electricity
11 and that no Federal renewable electricity credit will
12 be used more than once for compliance with this sec-
13 tion.

14 “(e) TRADING AND BANKING OF CREDITS.—

15 “(1) TRADING.—The lawful holder of a Federal
16 renewable electricity credit may sell, exchange,
17 transfer, submit for compliance in accordance with
18 subsection (c), or submit such credit for retirement
19 by the Secretary.

20 “(2) BANKING.—A Federal renewable elec-
21 tricity credit may be submitted in satisfaction of the
22 compliance obligation set forth in subsection (c) for
23 the compliance year in which the credit was issued
24 or for any of the 3 immediately subsequent compli-
25 ance years. The Secretary shall retire any Federal

1 renewable electricity credit that has not been sub-
2 mitted under subsection (c) by the deadline for the
3 compliance year that is 3 years after the compliance
4 year in which the credit was issued.

5 “(3) DELEGATION OF MARKET ADMINISTRA-
6 TION.—The Secretary may delegate to one or more
7 appropriate market-making entities the administra-
8 tion of a Federal renewable electricity credit market
9 for purposes of creating a transparent and efficient
10 national market.

11 “(4) OVERSIGHT.—The Secretary, in consulta-
12 tion with relevant Federal agencies, may prescribe
13 such rules as the Secretary determines necessary to
14 ensure the transparency, fairness, and stability of
15 the market in Federal renewable electricity credits
16 and any derivative instruments based on such cred-
17 its.

18 “(f) RENEWABLE ELECTRICITY DEPLOYMENT
19 FUND.—

20 “(1) IN GENERAL.—There is established in the
21 Treasury of the United States a Renewable Elec-
22 tricity Deployment Fund.

23 “(2) DEPOSITS.—All Federal alternative com-
24 pliance payments submitted to the Secretary pursu-

1 ant to subsection (c)(3) and civil penalties assessed
2 under this section shall be deposited into the Fund.

3 “(3) USE.—

4 “(A) IN GENERAL.—Amounts deposited in
5 the Fund shall be available exclusively for use
6 by the Secretary, subject to appropriations, to
7 make payments to retail electric suppliers in ac-
8 cordance with subparagraph (B).

9 “(B) ALLOCATION.—Not later than May 1
10 of each year from 2013 through 2040, the Sec-
11 retary shall distribute amounts deposited in the
12 Fund during the preceding 12-month period
13 among the retail electric suppliers which have
14 submitted Federal renewable electricity credits
15 to the Secretary in total or partial compliance
16 with their obligations under subsection (c) for
17 the preceding calendar year. Each retail electric
18 supplier shall receive a payment equal to the
19 product of—

20 “(i) the total payments made to all re-
21 tail electric suppliers under this subsection;
22 and

23 “(ii) the quotient obtained by dividing
24 the quantity specified in subclause (I) by
25 the quantity specified in subclause (II):

1 “(I) The quantity of Federal re-
2 newable electricity credits submitted
3 by the retail electric supplier for the
4 preceding calendar year pursuant to
5 subsection (c).

6 “(II) The total quantity of Fed-
7 eral renewable electricity credits sub-
8 mitted by all retail electric suppliers
9 for the preceding calendar year pursu-
10 ant to subsection (c).

11 “(g) INFORMATION COLLECTION.—In accordance
12 with section 13 of the Federal Energy Administration Act
13 of 1974 (15 U.S.C. 772), the Secretary may require any
14 retail electric supplier, renewable electricity generator, or
15 such other entities as the Secretary deems appropriate, to
16 provide any information the Secretary determines appro-
17 priate to carry out this section.

18 “(h) ENFORCEMENT AND JUDICIAL REVIEW.—

19 “(1) CIVIL PENALTY.—If any person fails to
20 comply with the requirements of subsection (c), such
21 person shall be liable to pay to the Secretary a civil
22 penalty equal to the product of—

23 “(A) double the Federal alternative compli-
24 ance payment calculated under subsection
25 (c)(3), and

1 “(B) the aggregate quantity of Federal re-
2 newable electricity credits (or equivalent Fed-
3 eral alternative compliance payments) that the
4 person failed to submit to the Secretary in vio-
5 lation of the requirements of subsection (c).

6 “(2) ENFORCEMENT.—The Secretary shall as-
7 sess a civil penalty under paragraph (1) in accord-
8 ance with the procedures described in section 333(d)
9 of the Energy Policy and Conservation Act of 1954
10 (42 U.S.C. 6303).

11 “(3) JUDICIAL REVIEW.—Any person who will
12 be adversely affected by a final action taken by the
13 Secretary under this section, other than the assess-
14 ment of a civil penalty under this subsection, may
15 use the procedures for review described in section
16 336(b) of the Energy Policy and Conservation Act
17 (42 U.S.C. 6306). For purposes of this paragraph,
18 references to a rule in section 336(b) of the Energy
19 Policy and Conservation Act shall be deemed to refer
20 also to all other final actions of the Secretary under
21 this section other than the assessment of a civil pen-
22 alty under this subsection.

23 “(i) SAVINGS PROVISIONS.—Nothing in this section
24 shall—

1 “(1) diminish or qualify any authority of a
2 State or political subdivision of a State to—

3 “(A) adopt or enforce any law or regula-
4 tion respecting renewable electricity, including
5 programs that exceed the required amount of
6 renewable electricity under this section, pro-
7 vided that no such law or regulation may relieve
8 any person of any requirement otherwise appli-
9 cable under this section; or

10 “(B) regulate the acquisition and disposi-
11 tion of Federal renewable electricity credits by
12 retail electric suppliers located within the terri-
13 tory of such State or political subdivision, in-
14 cluding the authority to require such retail elec-
15 tric supplier to acquire and retire Federal re-
16 newable electricity credits associated with elec-
17 tric energy it sells to end-use customers; or

18 “(2) affect the application of, or the responsi-
19 bility for compliance with, any other provision of law
20 or regulation, including environmental and licensing
21 requirements.

22 “(j) COST RECOVERY.—An electric utility, the retail
23 electricity sales of which are subject to rate regulation,
24 shall not be denied the opportunity to recover the full
25 amount of the prudently incurred incremental cost of re-

1 newable electricity obtained to comply with the require-
2 ments of subsection (c).

3 “(k) PROGRAM REVIEW.—

4 “(1) NATIONAL ACADEMY OF SCIENCES RE-
5 VIEW.—The Secretary shall enter into a contract
6 with the National Academy of Sciences under which
7 the Academy shall, not later than July 1, 2017, and
8 every 5 years thereafter through 2032, submit to the
9 Secretary and to Congress a comprehensive evalua-
10 tion of all aspects of the program established under
11 this section, including—

12 “(A) an evaluation of the effectiveness of
13 the program, including its specific design ele-
14 ments, in increasing the market penetration
15 and lowering the cost of the eligible renewable
16 electricity generation technologies;

17 “(B) the opportunities for any additional
18 technologies and sources of renewable electricity
19 generation that have emerged since enactment
20 of this section;

21 “(C) the program’s impact on the regional
22 diversity and reliability of electricity supply;

23 “(D) the net benefits or costs of the pro-
24 gram to the national and State economies, in-
25 cluding effects on retail electricity costs, eco-

1 nomic development benefits of investment, envi-
2 ronmental benefits, impacts on natural gas de-
3 mand and price, and avoided costs related to
4 environmental and congestion mitigation invest-
5 ments that otherwise would have been required;

6 “(E) an assessment of the benefits and
7 costs of increasing or extending the renewable
8 electricity requirements set forth in subsection
9 (c) of this section; and

10 “(F) recommendations regarding potential
11 changes to this section, to regulations and pro-
12 cedures for implementing this section, or to re-
13 lated public policies.

14 “(2) RECOMMENDATIONS TO CONGRESS.—Not
15 later than January 1, 2018, and every 5 years there-
16 after through 2033, the Secretary shall transmit to
17 the Committee on Energy and Commerce of the
18 United States House of Representatives and the
19 Committee on Energy and Natural Resources of the
20 United States Senate a report making recommenda-
21 tions for modifications and improvements to the pro-
22 gram established under this section and any related
23 programs, including an explanation of the inconsisten-
24 cies, if any, between the Secretary’s recommenda-

1 tions and those included in the National Academy of
2 Sciences evaluation under paragraph (1).

3 “(l) SUNSET.—This section expires on December 31,
4 2040.”.

5 (b) TABLE OF CONTENTS AMENDMENT.—The table
6 of contents of the Public Utility Regulatory Policies Act
7 of 1978 (16 U.S.C. 2601 and following) is amended by
8 adding at the end of the items relating to title VI the fol-
9 lowing:

10 **“SEC. 610. Federal renewable electricity standard.”.**