

110TH CONGRESS
1ST SESSION

H. R. 1133

To provide for the energy independence of the United States.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2007

Ms. BERKLEY introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Natural Resources, Energy and Commerce, and Science and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the energy independence of the United States.

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 This Act may be cited as the “Freedom through Re-
5 newable Energy Expansion (FREE) Act”.

6 SEC. 2. REPEAL OF NUCLEAR SUBSIDIES.

7 (a) NEXT GENERATION NUCLEAR PLANT
8 PROJECT.—Subtitle C of title VI of the Energy Policy Act
9 of 2005 (42 U.S.C. 16021 et seq.) and the items relating

1 thereto in the table of contents in section 1(b) of that Act
2 are repealed.

3 (b) STANDBY SUPPORT FOR CERTAIN NUCLEAR
4 PLANT DELAYS.—Section 638 of the Energy Policy Act
5 of 2005 (42 U.S.C. 16014) and the item relating thereto
6 in the table of contents in section 1(b) of that Act are
7 repealed.

8 (c) REPEAL OF CREDIT FOR PRODUCTION FROM AD-
9 VANCED NUCLEAR POWER FACILITIES.—

10 (1) IN GENERAL.—Subparagraph (B) of section
11 45J(d)(1) of the Internal Revenue Code of 1986 (re-
12 lating to advanced nuclear power facility) is amend-
13 ed by striking “January 1, 2021” and inserting “the
14 date of the enactment of the Freedom through Re-
15 newable Energy Expansion (FREE) Act”.

16 (2) EFFECTIVE DATE.—The amendment made
17 by paragraph (1) shall apply to property placed in
18 service after the date of the enactment of this Act.

19 **SEC. 3. REPEAL OF CERTAIN TAX SUBSIDIES FOR THE OIL
20 AND GAS INDUSTRY.**

21 (a) REPEAL OF ELECTION TO EXPENSE CERTAIN
22 REFINERIES.—

23 (1) IN GENERAL.—Subparagraph (B) of section
24 179C(c)(1) of the Internal Revenue Code of 1986
25 (relating to qualified refinery property) is amended

1 by striking “January 1, 2012” and inserting “the
2 date of the enactment of the Freedom through Re-
3 newable Energy Expansion (FREE) Act”.

4 (2) EFFECTIVE DATE.—The amendment made
5 by paragraph (1) shall apply to property placed in
6 service after the date of the enactment of this Act.

7 (b) REPEAL OF TREATMENT OF NATURAL GAS DIS-
8 TRIBUTION LINES AS 15-YEAR PROPERTY.—

9 (1) IN GENERAL.—Clause (viii) of section
10 168(e)(3)(E) of such Code (relating to 15-year prop-
11 erty) is amended by striking “January 1, 2011” and
12 inserting “the Freedom through Renewable Energy
13 Expansion (FREE) Act”.

14 (2) EFFECTIVE DATE.—The amendment made
15 by paragraph (1) shall apply to property placed in
16 service after the date of the enactment of this Act.

17 (c) REPEAL OF TREATMENT OF NATURAL GAS
18 GATHERING LINES AS 7-YEAR PROPERTY.—

19 (1) IN GENERAL.—Clause (iv) of section
20 168(e)(3)(C) of such Code (relating to 7-year prop-
21 erty) is amended by inserting “and which is placed
22 in service before the date of the enactment of the
23 Freedom through Renewable Energy Expansion
24 (FREE) Act” after “April 11, 2005.”.

4 (d) REPEAL OF NEW RULE FOR DETERMINING
5 SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUC-
6 TION.—

10 “(4) CERTAIN REFINERS EXCLUDED.—If the
11 taxpayer or a related person engages in the refining
12 of crude oil, subsection (c) shall not apply to such
13 taxpayer if on any day during the taxable year the
14 refinery runs of the taxpayer and such person exceed
15 50,000 barrels.”.

19 (e) REPEAL OF AMORTIZATION OF GEOLOGICAL AND
20 GEOPHYSICAL EXPENDITURES —

21 (1) IN GENEBAL—Sec

(relating to depreciation) is amended by striking subsection (h) and redesignating subsection (i) as subsection (h).

7 SEC. 4. REPEAL OF CERTAIN PROVISIONS OF THE ENERGY
8 POLICY ACT OF 2005 AND OTHER LAWS PRO-
9 VIDING INCENTIVES FOR OIL AND GAS PRO-
10 DUCTION FROM FEDERAL LANDS.

11 (a) REPEALS.—The following provisions of the En-
12 ergy Policy Act of 2005, and the items relating thereto
13 in the table of contents in section 1(b) of that Act, are
14 repealed:

15 (1) Section 343 (relating to marginal property
16 production incentives).

20 (3) Section 345 (relating to royalty relief for
21 deep water production).

22 (4) Section 357 (relating to comprehensive in-
23 ventory of OCS oil and natural gas resources).

11 (b) REPEAL OF ALASKA OFFSHORE ROYALTY SUS-
12 PENSION.—Section 8(a)(3)(B) of the Outer Continental
13 Shelf Lands Act (43 U.S.C. 1337(a)(3)(B)) is amended
14 by striking “and in the Planning Areas offshore Alaska”.

15 (c) REPEAL OF ROYALTY SUSPENSION WITH RE-
16 SPECT TO NATIONAL PETROLEUM RESERVE IN ALAS-
17 KA.—Section 107 of the Naval Petroleum Reserves Pro-
18 duction Act of 1976 (as amended by section 347(b)(11)
19 of the Energy Policy Act of 2005 (119 Stat. 706)) is
20 amended by repealing subsection (k).

21 (d) CONFORMING AMENDMENT.—Section 961(c) of
22 the Energy Policy Act of 2005 (42 U.S.C. 16291(c)) is
23 amended by striking paragraph (3) and redesignating
24 paragraph (4) as paragraph (3).

1 **SEC. 5. PRICE THRESHOLDS FOR ROYALTY SUSPENSION**2 **PROVISIONS.**

3 The Secretary of the Interior shall agree to a request
4 by any lessee to amend any lease issued for any Central
5 and Western Gulf of Mexico tract during the period of
6 January 1, 1998, through December 31, 1999, to incor-
7 porate price thresholds applicable to royalty suspension
8 provisions, that are equal to or less than the price thresh-
9 olds described in clauses (v) through (vii) of section
10 8(a)(3)(C) of the Outer Continental Shelf Lands Act (43
11 U.S.C. 1337(a)(3)(C)). Any amended lease shall impose
12 the new or revised price thresholds effective October 1,
13 2006. Existing lease provisions shall prevail through Sep-
14 tember 30, 2006.

15 **SEC. 6. CLARIFICATION OF AUTHORITY TO IMPOSE PRICE**16 **THRESHOLDS FOR CERTAIN LEASE SALES.**

17 Congress reaffirms the authority of the Secretary of
18 the Interior under section 8(a)(1)(H) of the Outer Conti-
19 nental Shelf Lands Act (43 U.S.C. 1337(a)(1)(H)) to
20 vary, based on the price of production from a lease, the
21 suspension of royalties under any lease subject to section
22 304 of the Outer Continental Shelf Deep Water Royalty
23 Relief Act (Public Law 104-58; 43 U.S.C. 1337 note).

1 **SEC. 7. ELIGIBILITY FOR NEW LEASES AND THE TRANSFER**
2 **OF LEASES; CONSERVATION OF RESOURCES**
3 **FEES.**

4 (a) ISSUANCE OF NEW LEASES.—

5 (1) IN GENERAL.—The Secretary shall not
6 issue any new lease that authorizes the production
7 of oil or natural gas in the Gulf of Mexico under the
8 Outer Continental Shelf Lands Act (43 U.S.C. 1331
9 et seq.) to a person described in paragraph (2) un-
10 less—

11 (A) the person has renegotiated each cov-
12 ered lease with respect to which the person is
13 a lessee, to modify the payment responsibilities
14 of the person to include price thresholds that
15 are equal to or less than the price thresholds
16 described in clauses (v) through (vii) of section
17 8(a)(3)(C) of the Outer Continental Shelf
18 Lands Act (43 U.S.C. 1337(a)(3)(C)); or

19 (B) the person has—

20 (i) paid all fees established by the
21 Secretary under subsection (b) that are
22 due with respect to each covered lease for
23 which the person is a lessee; or

24 (ii) entered into an agreement with
25 the Secretary under which the person is
26 obligated to pay such fees.

(2) PERSONS DESCRIBED.—A person referred to in paragraph (1) is a person that—

3 (A) is a lessee that—

4 (i) holds a covered lease on the date
5 on which the Secretary considers the
6 issuance of the new lease; or

13 (B) any other person or entity who has
14 any direct or indirect interest in, or who derives
15 any benefit from, a covered lease;

16 (3) MULTIPLE LESSEES.—

17 (A) IN GENERAL.—For purposes of para-
18 graph (1), if there are multiple lessees that own
19 a share of a covered lease, the Secretary may
20 implement separate agreements with any lessee
21 with a share of the covered lease that modifies
22 the payment responsibilities with respect to the
23 share of the lessee to include price thresholds
24 that are equal to or less than the price thresh-
25 olds described in clauses (v) through (vii) of

1 section 8(a)(3)(C) of the Outer Continental
2 Shelf Lands Act (43 U.S.C. 1337(a)(3)(C)).

3 (B) TREATMENT OF SHARE AS COVERED
4 LEASE.—Beginning on the effective date of an
5 agreement under subparagraph (A), any share
6 subject to the agreement shall not constitute a
7 covered lease with respect to any lessees that
8 entered into the agreement.

9 (b) CONSERVATION OF RESOURCES FEES.—

10 (1) IN GENERAL.—Not later than 60 days after
11 the date of enactment of this Act, the Secretary of
12 the Interior by regulation shall establish—

13 (A) a conservation of resources fee for pro-
14 ducing Federal oil and gas leases in the Gulf of
15 Mexico; and

16 (B) a conservation of resources fee for
17 nonproducing Federal oil and gas leases in the
18 Gulf of Mexico.

19 (2) PRODUCING LEASE FEE TERMS.—The fee
20 under paragraph (1)(A)—

21 (A) subject to subparagraph (C), shall
22 apply to covered leases that are producing
23 leases;

1 (B) shall be set at \$9 per barrel for oil and
2 \$1.25 per million Btu for gas, respectively, in
3 2005 dollars; and

4 (C) shall apply only to production of oil or
5 gas occurring—

6 (i) in any calendar year in which the
7 arithmetic average of the daily closing
8 prices for light sweet crude oil on the New
9 York Mercantile Exchange (NYMEX) ex-
10 ceeds \$34.73 per barrel for oil and \$4.34
11 per million Btu for gas in 2005 dollars;
12 and

13 (ii) on or after October 1, 2006.

16 (A) subject to subparagraph (C), shall
17 apply to leases that are nonproducing leases;

18 (B) shall be set at \$3.75 per acre per year
19 in 2005 dollars; and

20 (C) shall apply on and after October 1,
21 2006.

22 (4) TREATMENT OF RECEIPTS.—Amounts re-
23 ceived by the United States as fees under this sub-
24 section shall be treated as offsetting receipts.

1 (c) TRANSFERS.—A lessee or any other person who
2 has any direct or indirect interest in, or who derives a
3 benefit from, a lease shall not be eligible to obtain by sale
4 or other transfer (including through a swap, spinoff, serv-
5 icing, or other agreement) any covered lease, the economic
6 benefit of any covered lease, or any other lease for the
7 production of oil or natural gas in the Gulf of Mexico
8 under the Outer Continental Shelf Lands Act (43 U.S.C.
9 1331 et seq.), unless—

10 (1) the lessee or other person has—
11 (A) renegotiated all covered leases of the
12 lessee or other person; and
13 (B) entered into an agreement with the
14 Secretary to modify the terms of all covered
15 leases of the lessee or other person to include
16 limitations on royalty relief based on market
17 prices that are equal to or less than the price
18 thresholds described in clauses (v) through (vii)
19 of section 8(a)(3)(C) of the Outer Continental
20 Shelf Lands Act (43 U.S.C. 1337(a)(3)(C)); or
21 (2) the lessee or other person has—
22 (A) paid all fees established by the Sec-
23 retary under subsection (b) that are due with
24 respect to each covered lease for which the per-
25 son is a lessee; or

4 (d) DEFINITIONS.—In this section—

10 (B) issued by the Department of the Interior
11 under section 304 of the Outer Continental
12 Shelf Deep Water Royalty Relief Act (43
13 U.S.C. 1337 note; Public Law 104-58); and

14 (C) not subject to limitations on royalty re-
15 lief based on market price that are equal to or
16 less than the price thresholds described in
17 clauses (v) through (vii) of section 8(a)(3)(C) of
18 the Outer Continental Shelf Lands Act (43
19 U.S.C. 1337(a)(3)(C)).

1 **SEC. 8. AVERAGE FUEL ECONOMY STANDARDS.**

2 (a) IN GENERAL.—Section 32902 of title 49, United

3 States Code, is amended—

4 (1) in subsection (c)—

5 (A) by striking “(1) Subject to paragraph

6 (2) of this subsection, the” and inserting

7 “The”; and

8 (B) by striking paragraph (2); and

9 (2) by redesignating subsections (i) and (j) as

10 subsections (j) and (k), respectively, and by inserting

11 after subsection (h) the following:

12 “(i) STANDARDS FOR MODEL YEARS AFTER 2009.—

13 The Secretary of Transportation shall prescribe by regula-

14 tion average fuel economy standards for passenger auto-

15 mobiles manufactured by a manufacturer in model years

16 after model year 2009, that shall—

17 (1) ensure that the average fuel economy

18 achieved by passenger automobiles manufactured by

19 a manufacturer in model years after 2016 is no less

20 than 33 miles per gallon;

21 (2) ensure that improvements to fuel economy

22 standards do not degrade the safety of passenger

23 automobiles manufactured by a manufacturer; and

24 (3) maximize the retention of jobs in the auto-

25 mobile manufacturing sector of the United States.”.

(b) CONFORMING AMENDMENTS.—Section 32902 of title 49, United States Code, is further amended—

6 (2) in subsection (k) (as so redesignated) by
7 striking "or (g)" and inserting "(g), or (i)".

8 SEC. 9. RENEWABLE ELECTRICITY PRODUCTION CREDIT.

9 (a) IN GENERAL.—Section 45(d) of the Internal Rev-
10 enue Code of 1986 (relating to qualified facilities) is
11 amended by striking “January 1, 2009” each place it ap-
12 pears in paragraphs (1), (2), (3), (4), (5), (6), and (7)
13 and inserting “January 1, 2016”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 subsection (a) shall apply to property placed in service
16 after the date of the enactment of this Act.

17 SEC. 10. EXTENSION AND MODIFICATION OF INVESTMENT
18 TAX CREDIT WITH RESPECT TO SOLAR EN-
19 ERGY PROPERTY, QUALIFIED FUEL CELL
20 PROPERTY, AND GEOTHERMAL PROPERTY.

21 (a) SOLAR ENERGY PROPERTY.—Paragraphs
22 (2)(A)(i)(II) and (3)(A)(ii) of section 48(a) of the Internal
23 Revenue Code of 1986 are each amended by striking
24 “January 1, 2009” and inserting “January 1, 2016”.

1 (b) ELIGIBLE FUEL CELL PROPERTY.—Paragraph
2 (1)(E) of section 48(c) of such Code is amended by strik-
3 ing “December 31, 2008” and inserting “December 31,
4 2015”.

5 (c) GEOTHERMAL PROPERTY.—Paragraph (2)(A)(i)
6 of section 48(a) of such Code is amended by striking
7 “and” at the end of subclause (II) and by adding at the
8 end the following new subclause:

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to property placed in service after
15 the date of the enactment of this Act.

16 SEC. 11. EXTENSION OF CREDIT FOR RESIDENTIAL ENERGY

17 EFFICIENT PROPERTY.

18 (a) EXTENSION.—Subsection (g) of section 25D of
19 the Internal Revenue Code of 1986 (relating to termi-
20 nation) is amended by striking “December 31, 2008” and
21 inserting “December 31, 2015”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to property placed in service after
24 the date of the enactment of this Act.

1 **SEC. 12. CREDIT FOR WIND ENERGY PROPERTY INSTALLED**
2 **IN RESIDENCES AND BUSINESSES.**

3 (a) IN GENERAL.—Subpart B of part IV of sub-
4 chapter A of chapter 1 of the Internal Revenue Code of
5 1986 is amended by inserting after section 30C the fol-
6 lowing new section:

7 **“SEC. 30D. WIND ENERGY PROPERTY.**

8 “(a) ALLOWANCE OF CREDIT.—There shall be al-
9 lowed as a credit against the tax imposed by this chapter
10 for the taxable year an amount equal to 30 percent (10
11 percent after December 31, 2015) of the amount paid or
12 incurred by the taxpayer for qualified wind energy prop-
13 erty placed in service or installed during such taxable year.

14 “(b) LIMITATION.—No credit shall be allowed under
15 subsection (a) unless at least 50 percent of the energy pro-
16 duced annually by the qualified wind energy property is
17 consumed on the site on which the property is placed in
18 service or installed.

19 “(c) QUALIFIED WIND ENERGY PROPERTY.—For
20 purposes of this section, the term qualified wind energy
21 property means a qualifying wind turbine if—

22 “(1) such turbine is placed in service or in-
23 stalled on or in connection with property located in
24 the United States,

25 “(2) in the case of an individual, the property
26 on or in connection with which such turbine is in-

1 stalled is a dwelling unit which is located in the
2 United States,

3 “(3) the original use of such turbine commences
4 with the taxpayer, and

5 “(4) such turbine carries at least a 5-year lim-
6 ited warranty covering defects in design, material, or
7 workmanship, and, for property that is not installed
8 by the taxpayer, at least a 5-year limited warranty
9 covering defects in installation.

10 “(d) OTHER DEFINITIONS.—For purposes of this
11 section:

12 “(1) QUALIFYING WIND TURBINE.—The term
13 qualifying wind turbine means a wind turbine of 100
14 kilowatts of rated capacity or less which meets the
15 latest performance rating standards published by the
16 American Wind Energy Association and which is
17 used to generate electricity.

18 “(2) PRINCIPAL RESIDENCE.—The term prin-
19 cipal residence shall have the same meaning as when
20 used in section 121.

21 “(e) LIMITATION BASED ON AMOUNT OF TAX.—

22 “(1) IN GENERAL.—The credit allowed under
23 subsection (a) for any taxable year shall not exceed
24 the excess of—

1 “(A) the sum of the regular tax liability
2 (as defined in section 26(b)) plus the tax im-
3 posed by section 55, over

4 “(B) the sum of the credits allowable
5 under this part (other than under this section
6 and subpart C thereof, relating to refundable
7 credits) and section 1397E.

8 “(2) CARRYOVER OF UNUSED CREDIT.—If the
9 credit allowable under subsection (a) exceeds the
10 limitation imposed by paragraph (1) for such taxable
11 year, such excess shall be carried to the succeeding
12 taxable year and added to the credit allowable under
13 subsection (a) for such taxable year.

14 “(f) SPECIAL RULES.—For purposes of this section:

15 “(1) TENANT-STOCKHOLDER IN COOPERATIVE
16 HOUSING CORPORATION.—In the case of an indi-
17 vidual who is a tenant-stockholder (as defined in sec-
18 tion 216(b)(2)) in a cooperative housing corporation
19 (as defined in section 216(b)(1)), such individual
20 shall be treated as having paid his tenant-stock-
21 holder’s proportionate share (as defined in section
22 216(b)(3)) of any expenditures paid or incurred for
23 qualified wind energy property by such corporation,
24 and such credit shall be allocated appropriately to
25 such individual.

1 “(2) CONDOMINIUMS.—

2 “(A) IN GENERAL.—In the case of an indi-
3 vidual who is a member of a condominium man-
4 agement association with respect to a condo-
5 minium which he owns, such individual shall be
6 treated as having paid his proportionate share
7 of expenditures paid or incurred for qualified
8 wind energy property by such association, and
9 such credit shall be allocated appropriately to
10 such individual.

11 “(B) CONDOMINIUM MANAGEMENT ASSO-
12 CIATION.—For purposes of this paragraph, the
13 term condominium management association
14 means an organization which meets the require-
15 ments of section 528(c)(2) with respect to a
16 condominium project of which substantially all
17 of the units are used by individuals as resi-
18 dences.

19 “(g) BASIS ADJUSTMENT.—For purposes of this sub-
20 title, if a credit is allowed under this section for any ex-
21 penditure with respect to a residence or other property,
22 the basis of such residence or other property shall be re-
23 duced by the amount of the credit so allowed.”.

24 (b) CONFORMING AMENDMENT.—Subsection (a) of
25 section 1016 of such Code (relating to general rule for

1 adjustments to basis) is amended by striking “and” at the
2 end of paragraph (36), by striking the period at the end
3 of paragraph (37) and inserting “, and”, and by adding
4 at the end the following new paragraph:

5 “(38) in the case of a residence or other prop-
6 erty with respect to which a credit was allowed
7 under section 30D, to the extent provided in section
8 30D(g).”.

9 (c) CLERICAL AMENDMENT.—The table of sections
10 for subpart B of part IV of subchapter A of chapter 1
11 of such Code is amended by inserting after the item relat-
12 ing to section 30C the following new item:

“Sec. 30D. Wind energy property.”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to property placed in service or
15 installed after December 31, 2006, in taxable years ending
16 after such date.

17 **SEC. 13. GEOTHERMAL RESEARCH.**

18 There are authorized to be appropriated to the Sec-
19 retary of Energy \$32,500,000 for geothermal research.

20 **SEC. 14. RENEWABLE PORTFOLIO STANDARD.**

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

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

25 “(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:
2008 through 2009	5.0
2010 through 2011	8.0
2012 through 2013	11.0
2014 through 2015	15.0
2016 and thereafter	20.0.

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

11 “(A) generating electric energy using new
 12 renewable energy or existing renewable energy;
 13 “(B) purchasing electric energy generated
 14 by new renewable energy or existing renewable
 15 energy;

16 “(C) purchasing renewable energy credits
 17 issued under subsection (b); or

18 “(D) a combination of the foregoing.

19 “(b) RENEWABLE ENERGY CREDIT TRADING PRO-
 20 GRAM.—Not later than January 1 of the first calendar
 21 year beginning after the enactment of this Act, the Sec-
 22 retary shall establish a renewable energy credit trading

1 program to permit an electric utility that does not gen-
2 erate or purchase enough electric energy from renewable
3 energy to meet its obligations under subsection (a)(1) to
4 satisfy such requirements by purchasing sufficient renew-
5 able energy credits.

6 “(c) ENFORCEMENT.—

7 “(1) CIVIL PENALTIES.—Any electric utility
8 that fails to meet the renewable energy requirements
9 of subsection (a) shall be subject to a civil penalty.

10 “(2) AMOUNT OF PENALTY.—The amount of
11 the civil penalty shall be determined by multiplying
12 the number of kilowatt-hours of electric energy sold
13 to electric consumers in violation of subsection (a)
14 by the greater of 1.5 cents (adjusted for inflation
15 under subsection (f)) or 200 percent of the average
16 market value of renewable energy credits during the
17 year in which the violation occurred.

18 “(3) MITIGATION OR WAIVER.—The Secretary
19 may mitigate or waive a civil penalty under this sub-
20 section if the electric utility was unable to comply
21 with subsection (a) for reasons outside of the rea-
22 sonable control of the utility. The Secretary shall re-
23 duce the amount of any penalty determined under
24 paragraph (2) by an amount paid by the electric
25 utility to a State for failure to comply with the re-

1 requirement of a State renewable energy program if
2 the State requirement is greater than the applicable
3 requirement of subsection (a).

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

9 “(d) RULES.—The Secretary shall issue rules imple-
10 menting this section not later than 1 year after the date
11 of enactment of this section.

12 “(e) EXEMPTIONS.—This section shall not apply in
13 any calendar year to an electric utility—

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

17 “(2) in Hawaii.

18 “(f) INFLATION ADJUSTMENT.—Not later than De-
19 cember 31 of each year beginning in 2009, the Secretary
20 shall adjust for inflation the amount of the civil penalty
21 per kilowatt-hour under subsection (c)(2).

22 “(g) STATE PROGRAMS.—Nothing in this section
23 shall diminish any authority of a State or political subdivi-
24 sion thereof to adopt or enforce any law or regulation re-
25 specting renewable energy, but, except as provided in sub-

1 section (c)(3), no such law or regulation shall relieve any
2 person of any requirement otherwise applicable under this
3 section. The Secretary, in consultation with States having
4 such renewable energy programs, shall, to the maximum
5 extent practicable, facilitate coordination between the Fed-
6 eral program and State programs.

7 “(h) DEFINITIONS.—For purposes of this section:

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

12 “(A) electricity generated by a hydro-
13 electric facility (including a pumped storage fa-
14 cility but excluding incremental hydropower);
15 and

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

18 “(2) DISTRIBUTED GENERATION FACILITY.—
19 The term ‘distributed generation facility’ means a
20 facility at a customer site.

21 “(3) EXISTING RENEWABLE ENERGY.—The
22 term ‘existing renewable energy’ means, except as
23 provided in paragraph (7)(B), electric energy gen-
24 erated at a facility (including a distributed genera-
25 tion facility) placed in service prior to the date of

1 enactment of this section from solar, wind, or geo-
2 thermal energy; ocean energy; biomass (as defined in
3 section 203(a) of the Energy Policy Act of 2005); or
4 landfill gas.

5 “(4) GEOTHERMAL ENERGY.—The term ‘geo-
6 thermal energy’ means energy derived from a geo-
7 thermal deposit (within the meaning of section
8 613(e)(2) of the Internal Revenue Code of 1986).

9 “(5) INCREMENTAL GEOTHERMAL PRODUC-
10 TION.—

11 “(A) IN GENERAL.—The term ‘incremental
12 geothermal production’ means for any year the
13 excess of—

14 “(i) the total kilowatt hours of elec-
15 tricity produced from a facility (including a
16 distributed generation facility) using geo-
17 thermal energy, over

18 “(ii) the average annual kilowatt
19 hours produced at such facility for 5 of the
20 previous 7 calendar years before the date
21 of enactment of this section after elimi-
22 nating the highest and the lowest kilowatt
23 hour production years in such 7-year pe-
24 riod.

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

12 “(6) INCREMENTAL HYDROPOWER.—The term
13 ‘incremental hydropower’ means additional energy
14 generated as a result of efficiency improvements or
15 capacity additions made on or after the date of en-
16 actment of this section or the effective date of an ex-
17 isting applicable State renewable portfolio standard
18 program at a hydroelectric facility that was placed
19 in service before that date. The term does not in-
20 clude additional energy generated as a result of
21 operational changes not directly associated with effi-
22 ciency improvements or capacity additions. Effi-
23 ciency improvements and capacity additions shall be
24 measured on the basis of the same water flow infor-
25 mation used to determine a historic average annual

1 generation baseline for the hydroelectric facility and
2 certified by the Secretary or the Federal Energy
3 Regulatory Commission.

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

6 “(A) electric energy generated at a facility
7 (including a distributed generation facility)
8 placed in service on or after January 1, 2003,
9 from—

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

12 “(ii) biomass (as defined in section
13 203(a) of the Energy Policy Act of 2005);

14 “(iii) landfill gas; or

15 “(iv) incremental hydropower; and

16 “(B) for electric energy generated at a fa-
17 cility (including a distributed generation facil-
18 ity) placed in service prior to the date of enact-
19 ment of this section—

20 “(i) the additional energy above the
21 average generation in the 3 years pre-
22 ceding the date of enactment of this sec-
23 tion at the facility from—

24 “(I) solar or wind energy or
25 ocean energy;

1 “(II) biomass (as defined in sec-
2 tion 203(a) of the Energy Policy Act
3 of 2005);

4 “(III) landfill gas; or

5 “(IV) incremental hydropower.

6 “(ii) the incremental geothermal pro-
7 duction.

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

10 “(i) SUNSET.—This section expires on December 31,
11 2031.”.

12 **SEC. 15. FEDERAL ENERGY PURCHASE REQUIREMENT.**

13 Section 203(a) of the Energy Policy Act of 2005 (42
14 U.S.C. 15852(a)) is amended—

15 (1) by striking “seek to ensure that, to the ex-
16 tent economically feasible and technically prac-
17 ticable” and inserting “ensure that”;

18 (2) in paragraph (1), by striking “3 percent in
19 fiscal years 2007 through 2009” and inserting “3
20 percent in fiscal year 2007 and 5 percent in fiscal
21 years 2008 through 2010”;

22 (3) in paragraph (2), by striking “5 percent in
23 fiscal years 2010 through 2012” and inserting “11
24 percent in fiscal years 2011 through 2014”; and

4 SEC. 16. SCHOOL RENEWABLE ENERGY USE.

5 The Secretary of Energy shall establish a program
6 to make grants to local schools and school districts to pro-
7 mote and facilitate the use of renewable energy sources
8 in school facilities.

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