111TH CONGRESS
1ST SESSION

S. 826

To promote renewable energy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 3 (legislative day, APRIL 2), 2009

Ms. KLOBUCHAR (for herself and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To promote renewable energy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''American Renewable Energy Act of 2009''.

SEC. 2. RENEWABLE ELECTRICITY STANDARD.

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

''SEC. 610. RENEWABLE ELECTRICITY STANDARD.

''(a) DEFINITIONS.—In this section:

''(1) BASE QUANTITY OF ELECTRICITY.—

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

''(B) EXCLUSIONS.—The term 'base quantity of electricity' does not include electricity generated by a hydroelectric facility (including a pumped storage facility but excluding incremental hydropower).

''(2) DISTRIBUTED GENERATION FACILITY.—The term 'distributed generation facility' means a facility at a customer site.

''(3) EXISTING RENEWABLE ENERGY.—Except as provided in paragraph (7)(B), the term 'existing renewable energy' means electric energy generated at a facility (including a distributed generation facility) placed in service prior to January 1, 2001, from solar, wind, or geothermal energy, ocean energy, biomass (as defined by the Secretary of the Interior), municipal solid waste, or landfill gas.

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

''(5) INCREMENTAL GEOTHERMAL PRODUCTION.—

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

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

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

''(B) SPECIAL RULE.—A facility described in subparagraph (A) that was placed in service at least 7 years before the date of enactment of this section shall, commencing with the year in which that date of enactment occurs, reduce the amount calculated under subparagraph (A)(ii) each year, on a cumulative basis, by the average percentage decrease in the annual kilowatt hour production for the 7-year period described in

subparagraph (A)(ii) with such cumulative sum, but not to exceed 30 percent.

''(6) INCREMENTAL HYDROPOWER.—

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

''(i) January 1, 2001; or

''(ii) the effective commencement date of an existing applicable State renewable portfolio standard program at a hydroelectric facility that was placed in service before that date.

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

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

''(i) measured on the basis of the same water flow information used to deter-

mine a historic average annual generation baseline for the hydroelectric facility; and

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

''(7) NEW RENEWABLE ENERGY.—The term 'new renewable energy' means—

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

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

''(ii) biomass (as defined by the Secretary of the Interior);

''(iii) landfill gas;

''(iv) municipal solid waste;

''(v) incremental hydropower; or

''(vi) hydropower that has been certified by the Low Impact Hydropower Institute; and

''(B) for electric energy generated at a facility (including a distributed generation facility) placed in service before the date of enactment of this section—

''(i) the additional energy above the average generation during the 3-year period ending on the date of enactment of this section at the facility from—

''(I) solar, wind, or ocean energy;

''(II) landfill gas;

''(III) municipal solid waste;

''(IV) incremental hydropower; or

''(V) incremental geothermal production; and

''(ii) the electric energy derived from biomass (as defined by the Secretary of the Interior).

''(8) OCEAN ENERGY.—The term 'ocean energy' includes current, wave, tidal, and thermal energy.

''(b) RENEWABLE ELECTRICITY REQUIREMENT.—

''(1) REQUIREMENT.—

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

''(B) PERCENTAGE.—The percentage obtained in a calendar year under subparagraph (A) shall not be less than the amount specified in the following table:

"Calendar years:	Minimum annual percentage:
2010	2
2011	3
2012	4
2013	5
2014	6
2015	7
2016	8
2017	9
2018	11
2019	13
2020	15
2021	17
2022	19
2023	21
2024	23
2025	25.

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

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

''(B) making alternative compliance payments to the Secretary at the rate of 2 cents per kilowatt hour (as adjusted for inflation under subsection (g)); or

''(C) conducting a combination of activities described in subparagraphs (A) and (B).

''(3) GREEN JOBS.—In carrying out this section, the Secretary shall, to the maximum extent

practicable, provide an additional incentive to electric utilities that, in meeting the requirements of paragraph (1), also—

"(A) create jobs that pay a living wage that supports a family;

"(B) provide health insurance benefits to employees; and

"(C) comply with all Federal labor and environmental laws (including regulations).

"(c) RENEWABLE ENERGY CREDIT TRADING PROGRAM.—

"(1) IN GENERAL.—Not later than December 31, 2010, the Secretary shall establish a renewable energy credit trading program under which electric utilities shall submit to the Secretary renewable energy credits to certify the compliance of the electric utilities with respect to obligations under subsection (b)(1).

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

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

"(B) issue nontradeable renewable energy credits to generators of electric energy from existing renewable energy;

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

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

"(E) allow double credits for generation from facilities on Indian land, and triple credits for generation from small renewable distributed generators (meaning those no larger than 1 megawatt); and

"(F) ensure that, with respect to a purchaser that, as of the date of enactment of this section, has a purchase agreement from a renewable energy facility placed in service before that date (other than a biomass energy facility), the credit associated with the generation of renewable energy under the contract is issued to the purchaser of the electric energy.

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

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

''(5) DELEGATION OF MARKET FUNCTION.—The Secretary may delegate to an appropriate entity that establishes markets the administration of a national tradeable renewable energy credit market for purposes of creating a transparent national market for the sale or trade of renewable energy credits.

''(d) ENFORCEMENT.—

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

''(2) AMOUNT OF PENALTY.—Subject to paragraph (3), the amount of the civil penalty shall be equal to the product obtained by multiplying—

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

''(B) the greater of—

''(i) 2 cents (adjusted for inflation under subsection (g)); or

''(ii) 200 percent of the average market value of renewable energy credits during the year in which the violation occurred.

''(3) MITIGATION OR WAIVER.—

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

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

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

''(e) STATE RENEWABLE ENERGY ACCOUNT PROGRAM.—

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

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

''(3) USE.—Subject to appropriations, proceeds deposited in the State renewable energy account shall be used by the Secretary to carry out a program to provide grants to the State agency responsible for developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322) for the purposes of promoting renewable energy production, including programs that promote technologies that reduce the use of electricity at customer sites, such as solar water heating.

''(4) ADMINISTRATION.—The Secretary may issue guidelines and criteria for grants awarded under this subsection.

''(5) RECORDS.—State energy offices receiving grants under this section shall maintain such records and evidence of compliance as the Secretary may require.

''(6) PREFERENCE.—In allocating funds under this subsection, the Secretary shall give preference—

''(A) to States in regions that have a disproportionately small share of economically sustainable renewable energy generation capacity; and

''(B) to State programs to stimulate or enhance innovative renewable energy technologies.

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

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

''(2) in Hawaii.

''(g) INFLATION ADJUSTMENT.—Not later than December 31 of each year beginning in 2010, the Secretary shall adjust for United States dollar inflation from January 1, 2010 (as measured by the Consumer Price Index)—

''(1) the price of a renewable energy credit under subsection (c)(2); and

''(2) the amount of the civil penalty per kilowatt-hour under subsection (d)(2).

''(h) STATE PROGRAMS.—

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

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

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

''(4) REGULATIONS.—

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

receives renewable energy credits in relation to equivalent quantities of renewable energy associated with compliance mechanisms, other than the generation or purchase of renewable energy by the electric utility, including the acquisition of certificates or credits and the payment of taxes, fees, surcharges, or other financial compliance mechanisms by the electric utility or a customer of the electric utility, directly associated with the generation or purchase of renewable energy.

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

''(i) RECOVERY OF COSTS.—

''(1) IN GENERAL.—The Commission shall issue and enforce such regulations as are necessary to ensure that an electric utility recovers all prudently incurred costs associated with compliance with this section.

''(2) APPLICABLE LAW.—A regulation under paragraph (1) shall be enforceable in accordance with the provisions of law applicable to enforcement of regulations under the Federal Power Act (16 U.S.C. 791a et seq.).

''(j) WIND ENERGY DEVELOPMENT STUDY.—The Secretary, in consultation with appropriate Federal and State agencies, shall conduct, and submit to Congress a report describing the results of, a study on methods to increase transmission line capacity for wind energy development.

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

''(l) TERMINATION OF AUTHORITY.—This section and the authority provided by this section terminate on December 31, 2040.''.

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

''Sec. 609. Rural and remote communities electrification grants.
''Sec. 610. Renewable electricity standard.''.

SEC. 3. REDUCING BARRIERS TO SUPPLY CHAIN MANUFACTURING OF RENEWABLE ENERGY EQUIPMENT.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $50,000,000 for the Hollings Manufacturing Partnership Program, established under section 25 of the National Institute of Standards and Technology Act (15 U.S.C. 278k).

(b) USE OF FUNDS.—Amounts appropriated pursuant to subsection (a) shall be used to implement a strategy for reducing barriers to supply chain manufacturing of renewable energy equipment.

SEC. 4. WIND ENERGY SYSTEMS.

Section 14 of the Wind Energy Systems Act of 1980 (42 U.S.C. 9213) is amended to read as follows:

"SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There are authorized to be appropriated to the Secretary to carry out wind energy research, development, and deployment through the Energy Efficiency and Renewable Energy Office of the Department of Energy in accordance with this section—

''(1) $275,000,000 for fiscal year 2010;

''(2) $446,000,000 for fiscal year 2011;

''(3) $602,000,000 for fiscal year 2012;

''(4) $698,000,000 for fiscal year 2013; and

''(5) $794,500,000 for fiscal year 2014.

''(b) WIND TURBINE TECHNOLOGY AND RELIABILITY.—Of amounts made available under subsection (a), the Secretary shall use for land-based wind turbine technology and reliability—

''(1) $30,000,000 for fiscal year 2010;

''(2) $50,000,000 for fiscal year 2011;

''(3) $70,000,000 for fiscal year 2012;

''(4) $80,000,000 for fiscal year 2013; and

''(5) $100,000,000 for fiscal year 2014.

''(c) WIND ENERGY SYSTEM INTEGRATION AND TRANSMISSION DEVELOPMENT.—Of amounts made available under subsection (a), the Secretary shall use for wind energy system integration and transmission development—

''(1) $20,000,000 for fiscal year 2010;

''(2) $25,000,000 for fiscal year 2011;

''(3) $30,000,000 for fiscal year 2012;

''(4) $35,000,000 for fiscal year 2013; and

''(5) $40,000,000 for fiscal year 2014.

''(d) ADVANCED WIND ENERGY BLADES.—Of amounts made available under subsection (a), the Secretary shall use for advanced wind blade design, materials, and manufacturing processes—

''(1) $50,000,000 for fiscal year 2010;

''(2) $65,000,000 for fiscal year 2011;

''(3) $75,000,000 for fiscal year 2012;

''(4) $80,000,000 for fiscal year 2013; and

''(5) $85,000,000 for fiscal year 2014.

''(e) OFFSHORE WIND.—Of amounts made available under subsection (a), the Secretary shall use for accelerating the design, development, testing, and deployment of advanced offshore wind technology and supporting construction, operations, and maintenance infrastructure—

''(1) $100,000,000 for fiscal year 2010;

''(2) $200,000,000 for fiscal year 2011;

''(3) $300,000,000 for fiscal year 2012;

''(4) $350,000,000 for fiscal year 2013; and

''(5) $400,000,000 for fiscal year 2014.

''(f) WIND POWERING AMERICA PROGRAM.—Of the amounts made available under subsection (a), the Secretary shall use for and support the Wind Powering America program outreach and technical assistance activities—

''(1) $15,000,000 for fiscal year 2010;

''(2) $25,000,000 for fiscal year 2011;

''(3) $35,000,000 for fiscal year 2012;

''(4) $40,000,000 for fiscal year 2013; and

''(5) $45,000,000 for fiscal year 2014.

''(g) WIND ENERGY TECHNICAL TRAINING AND WORKFORCE DEVELOPMENT.—Of the amounts made available under subsection (a), the Secretary shall use for

and support the establishment of technical training programs with community colleges and technical schools—

''(1) $40,000,000 for fiscal year 2010;

''(2) $55,000,000 for fiscal year 2011;

''(3) $60,000,000 for fiscal year 2012;

''(4) $75,000,000 for fiscal year 2013; and

''(5) $80,000,000 for fiscal year 2014.

''(h) WIND ENERGY TEACHING TRAINING AND CURRICULA.—Of amounts made available under subsection (a), the Secretary shall use for and support establishment of wind education, teaching training, and curricula development programs at kindergarten through grade 12 levels—

''(1) $4,000,000 for fiscal year 2010;

''(2) $5,000,000 for fiscal year 2011;

''(3) $6,000,000 for fiscal year 2012;

''(4) $7,000,000 for fiscal year 2013; and

''(5) $8,000,000 for fiscal year 2014.

''(i) WIND RESOURCE MODELING AND WIND FARM EFFICIENCY ASSESSMENT.—Of amounts made available under subsection (a), the Secretary shall use for wind resource modeling and wind farm efficiency assessment—

''(1) $5,000,000 for fiscal year 2010;

''(2) $6,000,000 for fiscal year 2011;

''(3) $7,000,000 for fiscal year 2012;

''(4) $8,000,000 for fiscal year 2013; and

''(5) $10,000,000 for fiscal year 2014.

''(j) WIND ENERGY SITING.—Of amounts made available under subsection (a), the Secretary shall use for wind energy siting, including funding for public education on siting issues, studies on sound emissions and health effects, enhanced ground data modeling verification, and the creation of a national wind siting database—

''(1) $6,000,000 for fiscal year 2010;

''(2) $8,000,000 for fiscal year 2011;

''(3) $10,000,000 for fiscal year 2012;

''(4) $13,000,000 for fiscal year 2013; and

''(5) $16,000,000 for fiscal year 2014.

''(k) SMALL WIND ENERGY SYSTEMS.—Of amounts made available under subsection (a), the Secretary shall use for testing, demonstrating, and deploying small wind energy systems in rural school applications—

''(1) $5,000,000 for fiscal year 2010;

''(2) $7,000,000 for fiscal year 2011;

''(3) $9,000,000 for fiscal year 2012;

''(4) $10,000,000 for fiscal year 2013; and

''(5) $10,500,000 for fiscal year 2014.''.

SEC. 5. TEMPORARY REMOVAL OF CERTAIN TAX RESTRICTIONS TO PROMOTE EXPANSION OF CAPITAL FOR WIND FARM INVESTMENT.

(a) EXEMPTION FROM PASSIVE LOSS RULES.—

(1) IN GENERAL.—Section 469(c) of the Internal Revenue Code of 1986 (defining passive activity) is amended by adding at the end the following new paragraph:

''(8) CERTAIN RENEWABLE ENERGY FACILITIES.—The term 'passive activity' shall not include any trade or business involving ownership of 1 or more facilities described in section 45(d)(1).''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 2008.

(b) APPLICATION OF AT-RISK RULES.—

(1) IN GENERAL.—Section 465(b)(6) of the Internal Revenue Code of 1986 (relating to qualified nonrecourse financing treated as amount at risk) is amended—

(A) by inserting ''or renewable energy property'' after ''real property'' each place it appears in subparagraphs (A) and (B)(i), and

(B) by adding at the end the following new subparagraph:

''(F) RENEWABLE ENERGY PROPERTY.—The term 'renewable energy property' means property described in section 45(d)(1).''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to losses incurred after December 31, 2008, with respect to property placed in service by the taxpayer after such date.

(c) TREATMENT OF INCOME AND GAINS FROM WIND ENERGY AS QUALIFYING INCOME FOR PUBLICLY TRADED PARTNERSHIPS.—

(1) IN GENERAL.—Section 7704(d) of the Internal Revenue Code of 1986 (defining qualifying income) is amended—

(A) by inserting ''wind energy,'' after ''fertilizer,'' in paragraph (1)(E), and

(B) by adding at the end the following new paragraph:

''(6) WIND ENERGY.—For purposes of paragraph (1)(E), income and gains from wind energy include amounts realized from the sale of renewable energy credits, pollution allowances, and other environmental attributes.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply on the date of enactment of this Act.

(d) SUNSET.—The amendments made by this section shall not apply to taxable years beginning after December 31, 2010. The Internal Revenue Code of 1986 shall be applied and administered to taxable years described in the preceding sentence as if such amendments had never been enacted.

(e) ANTI-ABUSE RULES.—The Secretary of Treasury or the Secretary's designee shall prescribe such rules as are necessary to prevent the abuse of the purposes of the amendments made by this section.

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