

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**S.** \_\_\_\_\_

To promote the production of clean energy, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mr. GRAHAM introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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## A BILL

To promote the production of clean energy, 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,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Clean Energy Act of  
5       2009”.

6       **SEC. 2. SENSE OF CONGRESS ON CLEAN ENERGY AND EN-**  
7       **ERGY EFFICIENCY.**

8       It is the sense of Congress that the Federal Govern-  
9       ment should continue to support the use and expansion  
10      of clean energy and energy efficiency in—

11               (1) the production and use of energy;

1           (2) the reduction of greenhouse gas emissions;

2           and

3           (3) the reduction of dependence on foreign oil.

4 **SEC. 3. FEDERAL CLEAN ENERGY 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 CLEAN ENERGY STANDARD.**

9           “(a) DEFINITIONS.—In this section:

10           “(1) ADVANCED COAL GENERATION.—The term  
11 ‘advanced coal generation’ means the generation of  
12 electricity produced from coal by a new or existing  
13 coal generating facility that captures and perma-  
14 nently sequesters or stores at least 65 percent of  
15 greenhouse gases produced by the facility.

16           “(2) AFFILIATE.—The term ‘affiliate’ when  
17 used with respect to a person, means another person  
18 that directly or indirectly owns or controls, is owned  
19 or controlled by, or is under common ownership or  
20 control with, such person, as determined under regu-  
21 lations issued by the Secretary.

22           “(3) BASE QUANTITY OF ELECTRICITY.—

23           “(A) IN GENERAL.—The term ‘base quan-  
24 tity of electricity’ means the total quantity of

1 electricity sold by an electric utility to electric  
2 consumers in a calendar year.

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

5 “(i) electricity generated by a hydro-  
6 electric facility (including a pumped stor-  
7 age facility but excluding qualified hydro-  
8 power) owned by an electric utility or sold  
9 under contract or rate order to an electric  
10 utility to meet the needs of the retail cus-  
11 tomers of the utility; or

12 “(ii) electricity generated through the  
13 incineration of municipal solid waste owned  
14 by an electric utility or sold under contract  
15 or rate order to an electric utility to meet  
16 the needs of the retail customers of the  
17 utility.

18 “(4) BIOMASS.—The term ‘biomass’ means—

19 “(A) in the case of forest-related resources,  
20 mill residues, precommercial thinning, slash,  
21 brush, or nonmerchantable material;

22 “(B) solid wood waste materials, including  
23 waste pallets, crates, dunnage, manufacturing,  
24 and construction wood wastes (other than pres-  
25 sure-treated, chemically-treated, or painted

1 wood wastes), and landscape or right-of-way  
2 tree trimmings, but not including municipal  
3 solid waste (such as garbage), gas derived from  
4 the biodegradation of solid waste, or paper that is  
5 commonly recycled;

6 “(C) agricultural waste, including orchard  
7 tree crops, vineyards, grains, legumes, sugar,  
8 and other crop byproducts or residues, and live-  
9 stock waste nutrients;

10 “(D) a plant that is grown exclusively as  
11 a fuel for the production of electricity;

12 “(E) animal waste and animal byproducts;

13 “(F) food waste;

14 “(G) algae;

15 “(H) waste cellulosic residue from the pro-  
16 duction of biofuels; and

17 “(I) biogas and any solid produced by  
18 micro-organisms from any of the materials de-  
19 scribed in this paragraph.

20 “(5) CLEAN ENERGY.—The term ‘clean energy’  
21 means electric energy generated at a facility (includ-  
22 ing a distributed generation facility) from—

23 “(A) solar, wind, geothermal, or ocean en-  
24 ergy;

25 “(B) biomass;

1 “(C) landfill gas;

2 “(D) qualified hydropower;

3 “(E) marine and hydrokinetic renewable  
4 energy (as defined in section 632 of the Energy  
5 Independence and Security Act of 2007 (42  
6 U.S.C. 17211));

7 “(F) incremental geothermal production;

8 “(G) coal-mined methane;

9 “(H) qualified waste-to-energy;

10 “(I) qualified nuclear energy;

11 “(J) advanced coal generation;

12 “(K) eligible retired fossil fuel generation;

13 or

14 “(L) another clean energy source based on  
15 innovative technology, as determined by the  
16 Secretary through rulemaking.

17 “(6) DISTRIBUTED GENERATION FACILITY.—

18 The term ‘distributed generation facility’ means a  
19 facility at or near a customer site that provides elec-  
20 tric energy to 1 or more customers for purposes  
21 other than resale other than to a utility through a  
22 net metering arrangement.

23 “(7) ELIGIBLE RETIRED FOSSIL FUEL GENERA-  
24 TION.—The term ‘eligible retired fossil fuel genera-



1                   “(II) acquire Federal clean en-  
2                   ergy credits; or

3                   “(III) make alternative compli-  
4                   ance payments in order to comply  
5                   with the requirements of subsection  
6                   (b); less

7                   “(ii)(I) the costs the electric utility  
8                   would have incurred to serve all of the re-  
9                   tail customers of that electric utility in  
10                  that year to generate or acquire additional  
11                  electricity not eligible for clean energy  
12                  credits if the requirements of subsection  
13                  (b) did not apply to the electric utility; and

14                  “(II) the costs of compliance with any  
15                  comparable State clean energy require-  
16                  ment.

17                  “(B) COST OF ELECTRICITY.—In calcu-  
18                  lating the incremental cost of compliance of an  
19                  electric utility under this section, the Secretary  
20                  shall take into account the reduction, if any, in  
21                  the cost of electricity generated with fossil fuels  
22                  associated with increased reliance on clean en-  
23                  ergy generation.

24                  “(10) INCREMENTAL FOSSIL FUEL PRODUC-  
25                  TION.—The term ‘incremental fossil fuel production’

1 means the incremental quantity of electricity gen-  
2 erated at an existing fossil fuel generation facility  
3 over the average quantity of electricity generated at  
4 the facility during the preceding 3-year period that  
5 is attributable to permanent efficiency improvements  
6 or capacity additions made on or after the date of  
7 enactment of this section, if there is no increase in  
8 greenhouse gas emissions associated with the effi-  
9 ciency improvements or capacity additions when  
10 compared to the average greenhouse gas emissions  
11 during the preceding 3-year period.

12 “(11) 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 “(12) 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 “(13) INCREMENTAL NUCLEAR PRODUCTION.—

10 The term ‘incremental nuclear production’ means  
11 the incremental quantity of energy generated by an  
12 existing nuclear facility over the average quantity of  
13 energy generated at the facility during the preceding  
14 3-year period that is attributable to permanent effi-  
15 ciency improvements or capacity additions made on  
16 or after the date of enactment of this section.

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

20 “(15) QUALIFIED HYDROPOWER.—

21 “(A) IN GENERAL.—The term ‘qualified  
22 hydropower’ means—

23 “(i) incremental hydropower;

24 “(ii) additions of capacity made on or  
25 after January 1, 2001, or the effective

1 commencement date of an existing applica-  
2 ble State clean or renewable electricity  
3 standard program at an existing nonhydro-  
4 electric dam, if—

5 “(I) the hydroelectric project in-  
6 stalled on the nonhydroelectric dam—

7 “(aa) is licensed by the Fed-  
8 eral Energy Regulatory Commis-  
9 sion, or is exempt from licensing,  
10 and is in compliance with the  
11 terms and conditions of the li-  
12 cense or exemption; and

13 “(bb) meets all other appli-  
14 cable environmental, licensing,  
15 and regulatory requirements, in-  
16 cluding applicable fish passage  
17 requirements;

18 “(II) the nonhydroelectric dam—

19 “(aa) was placed in service  
20 before the date of enactment of  
21 this section;

22 “(bb) was operated for flood  
23 control, navigation, or water sup-  
24 ply purposes; and

1                   “(cc) did not produce hydro-  
2                   electric power as of the date of  
3                   enactment of this section; and

4                   “(III) the hydroelectric project is  
5                   operated so that the water surface ele-  
6                   vation at any given location and time  
7                   that would have occurred in the ab-  
8                   sence of the hydroelectric project is  
9                   maintained, subject to any license re-  
10                  quirements imposed under applicable  
11                  law that change the water surface ele-  
12                  vation for the purpose of improving  
13                  the environmental quality of the af-  
14                  fected waterway, as certified by the  
15                  Federal Energy Regulatory Commis-  
16                  sion; and

17                  “(iii) in the case of the State of Alas-  
18                  ka—

19                         “(I) energy generated by a small  
20                         hydroelectric facility that produces  
21                         less than 50 megawatts;

22                         “(II) energy from pumped stor-  
23                         age; and

24                         “(III) energy from a lake tap.

1           “(B) STANDARDS.—Nothing in this para-  
2 graph or the application of this paragraph shall  
3 affect the standards under which the Federal  
4 Energy Regulatory Commission issues licenses  
5 for and regulates hydropower projects under  
6 part I of the Federal Power Act (16 U.S.C.  
7 791a et seq.).

8           “(16) QUALIFIED NUCLEAR ENERGY.—The  
9 term ‘qualified nuclear energy’ means energy from a  
10 nuclear generating unit placed in service on or after  
11 the date of enactment of this section.

12           “(17) QUALIFIED WASTE-TO-ENERGY.—The  
13 term ‘qualified waste-to-energy’ means energy from  
14 the combustion of post-recycled municipal solid  
15 waste, or from the gasification or pyrolyzation of  
16 such waste and the combustion of the resulting gas  
17 at the same facility, if the owner or operator of the  
18 facility generating electricity from the energy pro-  
19 vides to the Commission, on an annual basis—

20           “(A) a certification that the facility is in  
21 compliance with all applicable Federal and  
22 State environmental permits;

23           “(B) in the case of a facility that com-  
24 mences operation before the date of enactment  
25 of this section, a certification that the facility

1 meets emissions standards promulgated under  
2 section 112 or 129 of the Clean Air Act (42  
3 U.S.C. 7412, 7429) that apply as of the date  
4 of enactment of this section to new facilities  
5 within the relevant source category; and

6 “(C) in the case of the combustion,  
7 pyrolyzation, or gasification of municipal solid  
8 waste, a certification that each local govern-  
9 ment unit from which such waste originates op-  
10 erates, participates in the operation of, con-  
11 tracts for, or otherwise provides for, recycling  
12 services for residents of the local government  
13 unit.

14 “(b) CLEAN ENERGY AND ENERGY EFFICIENCY RE-  
15 QUIREMENT.—

16 “(1) REQUIREMENT.—

17 “(A) IN GENERAL.—Subject to subpara-  
18 graph (B), each electric utility that sells elec-  
19 tricity to electric consumers for a purpose other  
20 than resale shall obtain a percentage of the  
21 base quantity of electricity the electric utility  
22 sells to electric consumers in any calendar year  
23 from clean energy or energy efficiency.

24 “(B) PERCENTAGE.—Except as provided  
25 in section 611, the percentage obtained in a cal-

1           endar year under subparagraph (A) shall not be  
 2           less than the amount specified in the following  
 3           table:

<b>“Calendar year:</b>	<b>Minimum annual percentage:</b>
2012 through 2014 .....	13
2015 through 2019 .....	15
2020 through 2024 .....	20
2025 through 2029 .....	25
2030 through 2034 .....	30
2035 through 2039 .....	35
2040 through 2044 .....	40
2045 through 2049 .....	45
2050 .....	50

4           “(2) MEANS OF COMPLIANCE.—An electric util-  
 5           ity shall meet the requirements of paragraph (1)  
 6           by—

7           “(A) submitting to the Secretary clean en-  
 8           ergy credits issued under subsection (c);

9           “(B) submitting Federal energy efficiency  
 10          credits issued under subsection (i), except that  
 11          those credits may not be used to meet more  
 12          than 25 percent of the requirements under  
 13          paragraph (1) in any calendar year;

14          “(C) making alternative compliance pay-  
 15          ments to the Secretary at the rate of 5.0 cents  
 16          per kilowatt hour (as adjusted for inflation  
 17          under subsection (g)) if the electric utility does  
 18          not elect to petition the Secretary to waive the  
 19          requirements under subsection (d)(3)(C); or

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

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

8           “(c) FEDERAL CLEAN ENERGY AND ENERGY EFFI-  
9           CIENCY CREDIT TRADING PROGRAMS.—

10           “(1) IN GENERAL.—Not later than January 1,  
11           2011, the Secretary shall establish a Federal clean  
12           energy credit trading program, and a Federal energy  
13           efficiency credit trading program, under which elec-  
14           tric utilities shall submit to the Secretary Federal  
15           clean energy credits and Federal energy efficiency  
16           credits to certify the compliance of the electric utili-  
17           ties with subsection (b)(1).

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

20           “(A) issue clean energy credits to genera-  
21           tors of electric energy from clean energy, re-  
22           gardless of whether the energy is transmitted  
23           over the national interstate transmission sys-  
24           tem;



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

6           “(C) issue clean energy credits to electric  
7 utilities associated with State clean energy  
8 standard compliance mechanisms pursuant to  
9 subsection (h);

10           “(D) issue energy efficiency credits pursu-  
11 ant to subsection (i);

12           “(E) subject to subparagraph (F), ensure  
13 that a kilowatt hour, including the associated  
14 clean energy credit or energy efficiency credit,  
15 shall be used only once for purposes of compli-  
16 ance with this Act;

17           “(F) allow double credits for generation  
18 from facilities on Indian land, and triple credits  
19 for generation from small clean energy distrib-  
20 uted generators no larger than 1 megawatt, ex-  
21 cept that no distributed clean energy generation  
22 facilities on Indian land shall receive a greater  
23 number of credits than triple credits;

24           “(G) ensure that, with respect to a pur-  
25 chaser that, as of the date of enactment of this

1 section, has a purchase agreement from a clean  
2 energy facility placed in service before that  
3 date, the credit associated with the generation  
4 of clean energy under the contract is issued to  
5 the purchaser of the electric energy to the ex-  
6 tent that the contract does not already provide  
7 for the allocation of the Federal credit;

8 “(H) in the case of eligible retired fossil  
9 fuel generation, issue 0.25 credits per kilowatt  
10 hour during the 5 year-period beginning on the  
11 date of retirement based on the average annual  
12 quantity of electricity generated by eligible re-  
13 tired fossil fuel generation during the final 3  
14 years of operation of the facility;

15 “(I) calculate the quantity of clean energy  
16 credits issued for advanced coal generation,  
17 which shall be equal to the product obtained by  
18 multiplying—

19 “(i) the kilowatt hours of electricity  
20 generated by a facility and supplied to the  
21 grid during the prior year; by

22 “(ii) during the same year, the ratio  
23 of—

1                   “(I) the quantity of carbon diox-  
2                   ide captured from the facility and se-  
3                   questered; bears to

4                   “(II) the sum of—

5                   “(aa) the quantity of carbon  
6                   dioxide captured from the facility  
7                   and sequestered; and

8                   “(bb) the quantity of carbon  
9                   dioxide emitted from the facility;  
10                  and

11                  “(J) issue clean energy credits for the use-  
12                  ful electric and thermal output from a facility  
13                  that produces the output from biomass, using a  
14                  system under which—

15                  “(i) in the case of efficiency that is  
16                  less than 50 percent, 1 clean energy credit  
17                  is awarded;

18                  “(ii) in the case of efficiency that is  
19                  50 percent or more but less than 70 per-  
20                  cent, 1.1 clean energy credits are awarded  
21                  for the same unit output;

22                  “(iii) in the case of efficiency that is  
23                  70 percent or more but less than 90 per-  
24                  cent, 1.25 clean energy credits are awarded  
25                  for the same unit output; and

1                   “(iv) in the case of efficiency that is  
2                   90 percent or more, 1.5 clean energy cred-  
3                   its are awarded for the same unit output.

4                   “(3) CLEAN ENERGY CREDIT BORROWING.—At  
5                   any time before the end of calendar year 2015 and  
6                   any subsequent calendar year, an electric utility that  
7                   has reason to believe the electric utility will not have  
8                   sufficient clean energy credits to comply with sub-  
9                   section (b) may—

10                   “(A) submit to the Secretary a plan that  
11                   demonstrates that the electric utility, as a con-  
12                   sequence of having facilities under construction  
13                   at the time the plan is submitted, will earn suf-  
14                   ficient clean energy credits during the subse-  
15                   quent 3 calendar years to meet the require-  
16                   ments of subsection (b) for calendar year 2015  
17                   and the subsequent calendar years affected; and

18                   “(B) on approval of the plan by the Sec-  
19                   retary, apply clean energy credits that the plan  
20                   demonstrates will be earned during the subse-  
21                   quent 3 calendar years to meet the require-  
22                   ments of subsection (b) for each calendar year  
23                   affected.

24                   “(4) CREDIT TRADING AND BANKING.—

1           “(A) IN GENERAL.—An electric utility that  
2 holds clean energy credits in excess of the quan-  
3 tity of credits needed to comply with subsection  
4 (b) may transfer the credits to another electric  
5 utility in the same utility holding company sys-  
6 tem or sell the credits to another electric utility.

7           “(B) CARRYING FORWARD.—A clean en-  
8 ergy credit for any year that is not used to sat-  
9 isfy the minimum clean energy requirements of  
10 subsection (b) for that year may be carried for-  
11 ward for use in any subsequent year.

12           “(5) DELEGATION OF MARKET FUNCTION.—

13           “(A) IN GENERAL.—The Secretary may  
14 delegate to—

15           “(i) an appropriate market-making  
16 entity the administration of a national  
17 clean energy credit market and a national  
18 energy efficiency credit market for pur-  
19 poses of creating a transparent national  
20 market for the sale or trade of clean en-  
21 ergy credits and energy efficiency credits;  
22 and

23           “(ii) regional entities the tracking of  
24 dispatch of clean energy generation.

1           “(B) ADMINISTRATION.—Any delegation  
2           under subparagraph (A) shall ensure that the  
3           tracking and reporting of information con-  
4           cerning the dispatch of clean energy generation  
5           is transparent, verifiable, and independent of  
6           any generation or load interests with obligations  
7           under this section.

8           “(d) ENFORCEMENT.—

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

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

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

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

21          “(3) MITIGATION OR WAIVER.—

22               “(A) PENALTY.—

23                   “(i) IN GENERAL.—The Secretary  
24                   may mitigate or waive a civil penalty under  
25                   this subsection if the electric utility is un-

1           able to comply with subsection (b) due to  
2           a reason outside of the reasonable control  
3           of the electric utility.

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

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

22          “(C) RATEPAYER PROTECTION.—

23                  “(i) IN GENERAL.—Subject to clause  
24                  (ii), effective beginning June 1, 2010, and  
25                  not later than June 1 of each year there-

1 after, an electric utility may petition the  
2 Secretary to waive, for the following com-  
3 pliance year, all or part of the require-  
4 ments of subsection (b) in order to limit  
5 the rate impact of the incremental cost of  
6 compliance of the electric utility to not  
7 more than 4 percent per retail customer in  
8 any year.

9 “(ii) REQUIREMENTS.—

10 “(I) EXHAUSTION OF OPPORTU-  
11 NITIES.—The Secretary may waive all  
12 or port of the requirements of sub-  
13 section (b) only on a demonstration by  
14 the petitioner that the petitioner has  
15 exhausted all opportunities under this  
16 section to comply with the require-  
17 ments of subsection (b).

18 “(II) LIMITATIONS.—Any waiver  
19 granted by the Secretary under this  
20 subparagraph shall be limited to the  
21 maximum extent practicable while en-  
22 suring that the increased cost of com-  
23 pliance does not exceed 4 percent per  
24 retail customer for any year.



1           “(D) VARIANCE.—A State public utility  
2           commission or electric utility may submit an  
3           application to the Secretary that requests a  
4           variance from the requirements of subsection  
5           (b) for 1 or more calendar years (including sus-  
6           pension or reduction of the requirements) on  
7           the basis of transmission constraints preventing  
8           delivery of clean energy.

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

14          “(e) ALTERNATIVE COMPLIANCE PAYMENTS.—

15               “(1) IN GENERAL.—An electric utility may sat-  
16               isfy the requirements of subsection (b), in whole or  
17               in part, by submitting in accordance with this sub-  
18               section, in lieu of each Federal clean energy credit  
19               or megawatt hour of demonstrated total annual elec-  
20               tricity savings that would otherwise be due, a pay-  
21               ment equal to the amount required under subsection  
22               (b) in accordance with such regulations as the Sec-  
23               retary may promulgate.

24               “(2) PAYMENT TO STATE FUNDS.—Payments  
25               made under this subsection shall be made directly to

1 the State in which the electric utility is located, if  
2 the payments are deposited directly into a fund with-  
3 in the treasury of the State for use in accordance  
4 with paragraph (3).

5 “(3) USE OF GRANTS.—The Governor of any  
6 State may expend amounts in a State clean energy  
7 escrow account solely for purposes of—

8 “(A) increasing the quantity of electric en-  
9 ergy produced from a clean energy source in the  
10 State, including nuclear and advanced coal  
11 technologies for carbon capture and sequestra-  
12 tion;

13 “(B) promoting the deployment and use of  
14 electric drive vehicles in the State, including the  
15 development of electric drive vehicles and bat-  
16 teries; and

17 “(C) offsetting the costs of carrying out  
18 this section paid by electric consumers in the  
19 State through—

20 “(i) direct grants to electric con-  
21 sumers; or

22 “(ii) energy efficiency investments.

23 “(4) INFORMATION AND REPORTS.—As a condi-  
24 tion of providing payments to a State under this  
25 subsection, the Secretary may require the Governor

1 to keep such accounts or records, and furnish such  
2 information and reports, as the Secretary determines  
3 are necessary and appropriate for determining com-  
4 pliance with this subsection.

5 “(f) EXEMPTIONS.—

6 “(1) IN GENERAL.—During any calendar year,  
7 this section shall not apply to an electric utility—

8 “(A) that sold less than 4,000,000 mega-  
9 watt hours of electric energy to electric con-  
10 sumers during the preceding calendar year, ex-  
11 cept that sales to an affiliate, lessee, or tenant  
12 of the electric utility shall not be treated as  
13 sales to electric consumers under this para-  
14 graph; or

15 “(B) in Hawaii.

16 “(2) ADMINISTRATION.—

17 “(A) VOLUNTARY COVERAGE.—Paragraph  
18 (1) shall not apply to an electric utility de-  
19 scribed in paragraph (1) that voluntarily elects  
20 to be covered by this section.

21 “(B) SALE OF CLEAN ENERGY CREDITS.—  
22 An electric utility that is not covered by this  
23 section and has not elected to be covered by  
24 this section shall not be eligible to sell any cred-

1           its generated pursuant to this section to any  
2           other person.

3           “(g) INFLATION ADJUSTMENT.—Not later than De-  
4 cember 31 of each year beginning in 2011, the Secretary  
5 shall adjust for inflation the rate of the alternative compli-  
6 ance payment under subsection (b)(2)(C).

7           “(h) STATE PROGRAMS.—

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

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

18           “(3) COORDINATION.—The Secretary, in con-  
19 sultation with States having such clean energy and  
20 energy efficiency programs, shall, to the maximum  
21 extent practicable, facilitate coordination between  
22 the Federal program and State programs.

23           “(4) REGULATIONS.—

24           “(A) IN GENERAL.—The Secretary, in con-  
25 sultation with States, shall promulgate regula-

1 tions to ensure that an electric utility that is  
2 subject to the requirements of this section and  
3 is subject to a State renewable energy or clean  
4 energy standard receives clean energy credits  
5 if—

6 “(i) the electric utility complies with  
7 the State standard by generating or pur-  
8 chasing clean energy or renewable energy  
9 certificates or credits representing clean  
10 energy; or

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

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

18 “(i) in the case of subparagraph  
19 (A)(i), the quantity of clean energy result-  
20 ing from the generation or purchase by the  
21 electric utility of clean energy; and

22 “(ii) in the case of subparagraph  
23 (A)(ii), the pro rata share of the electric  
24 utility, based on the contributions to the  
25 mechanism made by the electric utility or

1 customers of the electric utility, in the  
2 State, of the quantity of clean energy re-  
3 sulting from those mechanisms.

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

10 “(i) ENERGY EFFICIENCY CREDITS.—

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

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

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

24 “(ii) in the case of new equipment (re-  
25 gardless of whether the new equipment re-

1 places existing equipment at the end of the  
2 useful life of the existing equipment), con-  
3 sumption by similar equipment of average  
4 efficiency available for purchase at the  
5 time that new equipment is acquired.

6 “(B) ELECTRICITY SAVINGS.—The term  
7 ‘electricity savings’ means—

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

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

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

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

1           “(2) PETITION.—On petition by the Governor  
2 of a State or, in the case of the power service area  
3 of the Tennessee Valley Authority, the Board of Di-  
4 rectors of the Tennessee Valley Authority, the Sec-  
5 retary shall allow up to 25 percent of the require-  
6 ments of an electric utility under subsection (b)(1)  
7 associated with the sales of electricity of the utility  
8 in the State to be met by submitting Federal energy  
9 efficiency credits issued pursuant to this subsection.

10           “(3) ISSUANCE OF ENERGY EFFICIENCY CRED-  
11 ITS.—

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

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

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

24           “(ii) qualified electricity savings  
25 achieved by other entities (including State



1 agencies) on or after the date of enactment  
2 of this section if—

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

7 “(II) an electric utility eligible to  
8 receive efficiency credits did not pay a  
9 substantial portion of the cost of  
10 achieving the qualified electricity sav-  
11 ings (unless the utility has waived any  
12 entitlement to the credit).

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

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

24 “(A) procedures and standards for defining  
25 and measuring electricity savings that will be

1 eligible to receive credits under paragraph (3),  
2 which shall—

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

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

12 “(iii) account for the useful life of  
13 electricity savings measures;

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

17 “(v) exclude electricity savings that—

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

21 “(II) have already been credited  
22 under this section to another entity;

23 or

1                   “(III) do not result from actions  
2                   not intended to achieve electricity sav-  
3                   ings;

4                   “(B) procedures and standards for third  
5                   party verification of reported electricity savings;  
6                   and

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

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

18                  “(6) INCREMENTAL NUCLEAR AND INCRE-  
19                  MENTAL FOSSIL FUEL PRODUCTION.—

20                  “(A) IN GENERAL.—Subject to subpara-  
21                  graph (B), under regulations promulgated by  
22                  the Secretary, the increment of electricity out-  
23                  put attributable to incremental nuclear produc-  
24                  tion and incremental fossil fuel production shall

1 be considered electricity savings under this sub-  
2 section.

3 “(B) LIMITATION.—The increment of elec-  
4 tricity output described in subparagraph (A)  
5 shall meet not more than 10 percent of the  
6 total obligation of an electric utility under sub-  
7 section (b).

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

12 “(k) LOANS FOR PROJECTS TO COMPLY WITH FED-  
13 ERAL CLEAN ENERGY STANDARD.—

14 “(1) PURPOSES.—The purposes of this sub-  
15 section are—

16 “(A) to reduce the cost incurred by electric  
17 utilities in complying with the requirements of  
18 this section; and

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

21 “(2) LOANS.—The Secretary shall make loans  
22 available to electric utilities to carry out qualified  
23 projects approved by the Secretary to comply with  
24 the requirements of this section.

25 “(3) QUALIFIED PROJECTS.—

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

3                   “(i) to construct a clean energy gen-  
4                   eration facility;

5                   “(ii) to install an energy efficiency or  
6                   electricity demand reduction technology; or

7                   “(iii) to carry out any other project  
8                   approved by the Secretary that the Sec-  
9                   retary determines is consistent with the  
10                  purposes of this subsection.

11                  “(B) DISAPPROVAL.—The Secretary may  
12                  disapprove an application for a loan for a  
13                  project under this subsection if the Secretary  
14                  determines that—

15                  “(i) the revenues generated under the  
16                  project are unlikely to be sufficient to  
17                  cover the repayment obligations of the pro-  
18                  posed loan; or

19                  “(ii) the project is not otherwise con-  
20                  sistent with the purposes of this sub-  
21                  section.

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

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

1           “(B) bear an annual interest rate that is  
2           50 basis points more than the Federal funds  
3           rate established by the Board of Governors of  
4           the Federal Reserve System.

5           “(5) PRIORITY.—Notwithstanding any other  
6           provision of law, the debt to the Federal Government  
7           under a loan made to an electric utility under this  
8           subsection shall have priority in any case in which  
9           the electric utility files for bankruptcy protection  
10          under title 11, United States Code.

11          “(6) AUTHORIZATION OF APPROPRIATIONS.—  
12          There are authorized to be appropriated such sums  
13          as are necessary to carry out this subsection.

14          “(1) RECONSIDERATION.—

15                 “(1) REVIEW.—

16                         “(A) IN GENERAL.—Not later than Janu-  
17                         ary 15, 2017, and every 5 years thereafter, the  
18                         Secretary shall review and make recommenda-  
19                         tions to Congress on the program established  
20                         under this section.

21                         “(B) ANALYSIS.—The review shall analyze  
22                         whether—

23                                 “(i) the program established under  
24                                 this section has contributed to an economi-

1 cally harmful increase in electricity rates in  
2 regions of the United States;

3 “(ii) the program has resulted in net  
4 economic benefits for the United States;  
5 and

6 “(iii) new technologies and clean en-  
7 ergy sources will advance the purposes of  
8 this section.

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

11 “(A) the percentage of energy efficiency  
12 credits eligible to be submitted under subsection  
13 (b)(1) should be increased or decreased;

14 “(B) the percentage of clean energy elec-  
15 tricity required under subsection (b)(1) should  
16 be increased or decreased; and

17 “(C) the definition of ‘clean energy’ should  
18 be expanded to reflect advances in technology  
19 or previously unavailable sources of clean or re-  
20 newable energy.

21 “(3) REPORT.—Not later than January 15,  
22 2017, the Secretary shall submit to Congress a re-  
23 port that describes any recommendations of the Sec-  
24 retary on changes to the program established under  
25 this section.

1           “(m) REGULATIONS.—Not later than 1 year after the  
2 date of enactment of this section, the Secretary shall pro-  
3 mulgate regulations implementing this section.

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

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

“Sec. 610. Federal clean energy standard.”.

11 **SEC. 4. NUCLEAR LOAN GUARANTEE LANGUAGE SUFFI-**  
12 **CIENT TO BUILD 60 ADDITIONAL NUCLEAR**  
13 **REACTORS.**

【To be supplied.】

14 **SEC. 5. CCS RESEARCH, DEMONSTRATION AND DEPLOY-**  
15 **MENT PROGRAM.**

【To be supplied.】