

PENDING

AMENDMENT NO. _____ Calendar No. _____

Purpose: To establish a renewable portfolio standard.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

AMENDMENT No. 0791

To _____
By Bingaman & others nd

To: H. R. 6

Refer _____
Page(s) 11

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Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by
Mr. Bingaman for Mr. Coleman, Mr. Jeffords, Mr. Collins, Mr. Dorgan, Ms. Feinstein, Ms. Cantwell
Viz: Mr. Reid, & Mr. Salazar

1 At the end of title II, add the following:

2 **Subtitle F—Renewable Portfolio**
3 **Standard**

4 **SEC. 271. RENEWABLE PORTFOLIO STANDARD.**

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

8 **“SEC. 609. FEDERAL RENEWABLE PORTFOLIO STANDARD.**

9 **“(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 2011	2.5
2012 through 2015	5.0
2016 through 2019	7.5
2020 through 2030	10.0

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.—

21 “(1) Not later than January 1, 2007, the Sec-
 22 retary shall establish a renewable energy credit trad-

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

6 “(2) As part of such program the Secretary
7 shall—

8 “(A) issue renewable energy credits to gen-
9 erators of electric energy from new renewable
10 energy;

11 “(B) sell renewable energy credits to elec-
12 tric utilities at the rate of 1.5 cents per kilo-
13 watt-hour (as adjusted for inflation under sub-
14 section (g));

15 “(C) ensure that a kilowatt hour, including
16 the associated renewable energy credit, shall be
17 used only once for purposes of compliance with
18 this section; and

19 “(D) allow double credits for generation
20 from facilities on Indian Lands, and triple cred-
21 its for generation from small renewable distrib-
22 uted generators (meaning those those no larger
23 than 1 megawatt).

1 “(3) Credits under paragraph (2)(A) may only
2 be used for compliance with this section for 3 years
3 from the date issued.

4 “(c) ENFORCEMENT.—

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

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

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

1 the State requirement is greater than the applicable
2 requirement of subsection (a).

3 “(4) PROCEDURE FOR ASSESSING PENALTY.—
4 The Secretary shall assess a civil penalty under this
5 subsection in accordance with the procedures pre-
6 scribed by section 333(d) of the Energy Policy and
7 Conservation Act of 1954 (42 U.S.C. 6303).

8 “(d) STATE RENEWABLE ENERGY ACCOUNT PRO-
9 GRAM.—

10 “(1) The Secretary shall establish, not later
11 than December 31, 2008, a State renewable energy
12 account program.

13 “(2) All money collected by the Secretary from
14 the sale of renewable energy credits and the assess-
15 ment of civil penalties under this section shall be de-
16 posited into the renewable energy account estab-
17 lished pursuant to this subsection. The State renew-
18 able energy account shall be held by the Secretary
19 and shall not be transferred to the Treasury Depart-
20 ment.

21 “(3) Proceeds deposited in the State renewable
22 energy account shall be used by the Secretary, sub-
23 ject to appropriations, for a program to provide
24 grants to the State agency responsible for developing
25 State energy conservation plans under section 362 of

1 the Energy Policy and Conservation Act (42 U.S.C.
2 6322) for the purposes of promoting renewable en-
3 ergy production, including programs that promote
4 technologies that reduce the use of electricity at cus-
5 tomer sites such as solar water heating.

6 “(4) The Secretary may issue guidelines and
7 criteria for grants awarded under this subsection.
8 State energy offices receiving grants under this sec-
9 tion shall maintain such records and evidence of
10 compliance as the Secretary may require.

11 “(5) In allocating funds under this program,
12 the Secretary shall give preference—

13 “(A) to States in regions which have a dis-
14 proportionately small share of economically sus-
15 tainable renewable energy generation capacity;
16 and

17 “(B) to State programs to stimulate or en-
18 hance innovative renewable energy technologies.

19 “(e) RULES.—The Secretary shall issue rules imple-
20 menting this section not later than 1 year after the date
21 of enactment of this section.

22 “(f) EXEMPTIONS.—This section shall not apply in
23 any calendar year to an electric utility—

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

4 “(2) in Hawaii.

5 “(g) INFLATION ADJUSTMENT.—Not later than De-
6 cember 31 of each year beginning in 2008, the Secretary
7 shall adjust for inflation the price of a renewable energy
8 credit under subsection (b)(2)(B) and the amount of the
9 civil penalty per kilowatt-hour under subsection (c)(2).

10 “(h) STATE PROGRAMS.—Nothing in this section
11 shall diminish any authority of a State or political subdivi-
12 sion thereof to adopt or enforce any law or regulation re-
13 specting renewable energy, but, except as provided in sub-
14 section (c)(3), no such law or regulation shall relieve any
15 person of any requirement otherwise applicable under this
16 section. The Secretary, in consultation with States having
17 such renewable energy programs, shall, to the maximum
18 extent practicable, facilitate coordination between the Fed-
19 eral program and State programs.

20 “(i) DEFINITIONS.—For purposes of this section:

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

1 “(A) electricity generated by a hydro-
2 electric facility (including a pumped storage fa-
3 cility but excluding incremental hydropower);
4 and

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

7 “(2) DISTRIBUTED GENERATION FACILITY.—
8 The term ‘distributed generation facility’ means a
9 facility at a customer site.

10 “(3) EXISTING RENEWABLE ENERGY.—The
11 term ‘existing renewable energy’ means, except as
12 provided in paragraph (7)(B), electric energy gen-
13 erated at a facility (including a distributed genera-
14 tion facility) placed in service prior to the date of
15 enactment of this section from solar, wind, or geo-
16 thermal energy; ocean energy; biomass (as defined in
17 section 203(a) of the Energy Policy Act of 2005); or
18 landfill gas.

19 “(4) GEOTHERMAL ENERGY.—The term ‘geo-
20 thermal energy’ means energy derived from a geo-
21 thermal deposit (within the meaning of section
22 613(e)(2) of the Internal Revenue Code of 1986).

23 “(5) INCREMENTAL GEOTHERMAL PRODUC-
24 TION.—

1 “(A) IN GENERAL.—The term ‘incremental
2 geothermal production’ means for any year the
3 excess of—

4 “(i) the total kilowatt hours of elec-
5 tricity produced from a facility (including a
6 distributed generation facility) using geo-
7 thermal energy, over

8 “(ii) the average annual kilowatt
9 hours produced at such facility for 5 of the
10 previous 7 calendar years before the date
11 of enactment of this section after elimi-
12 nating the highest and the lowest kilowatt
13 hour production years in such 7-year pe-
14 riod.

15 “(B) SPECIAL RULE.—A facility described
16 in subparagraph (A) which was placed in serv-
17 ice at least 7 years before the date of enactment
18 of this section shall commencing with the year
19 in which such date of enactment occurs, reduce
20 the amount calculated under subparagraph
21 (A)(ii) each year, on a cumulative basis, by the
22 average percentage decrease in the annual kilo-
23 watt hour production for the 7-year period de-
24 scribed in subparagraph (A)(ii) with such cu-
25 mulative sum not to exceed 30 percent.

1 “(6) INCREMENTAL HYDROPOWER.—The term
2 ‘incremental hydropower’ means additional energy
3 generated as a result of efficiency improvements or
4 capacity additions made on or after the date of en-
5 actment of this section or the effective date of an ex-
6 isting applicable State renewable portfolio standard
7 program at a hydroelectric facility that was placed
8 in service before that date. The term does not in-
9 clude additional energy generated as a result of
10 operational changes not directly associated with effi-
11 ciency improvements or capacity additions. Effi-
12 ciency improvements and capacity additions shall be
13 measured on the basis of the same water flow infor-
14 mation used to determine a historic average annual
15 generation baseline for the hydroelectric facility and
16 certified by the Secretary or the Federal Energy
17 Regulatory Commission.

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

20 “(A) electric energy generated at a facility
21 (including a distributed generation facility)
22 placed in service on or after January 1, 2003,
23 from—

24 “(i) solar, wind, or geothermal energy
25 or ocean energy;

1 “(ii) biomass (as defined in section
2 203(a) of the Energy Policy Act of 2005);

3 “(iii) landfill gas; or

4 “(iv) incremental hydropower; and

5 “(B) for electric energy generated at a fa-
6 cility (including a distributed generation facil-
7 ity) placed in service prior to the date of enact-
8 ment of this section—

9 “(i) the additional energy above the
10 average generation in the 3 years pre-
11 ceding the date of enactment of this sec-
12 tion at the facility from—

13 “(I) solar or wind energy or
14 ocean energy;

15 “(II) biomass (as defined in sec-
16 tion 203(a) of the Energy Policy Act
17 of 2005);

18 “(III) landfill gas; or

19 “(IV) incremental hydropower.

20 “(ii) the incremental geothermal pro-
21 duction.

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

24 “(j) SUNSET.—This section expires on December 31,
25 2030.”.