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(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R. _____

To accelerate the development and early deployment of systems for the capture and storage of carbon dioxide emissions from fossil fuel electric generation facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. BOUCHER introduced the following bill; which was referred to the Committee on _____

A BILL

To accelerate the development and early deployment of systems for the capture and storage of carbon dioxide emissions from fossil fuel electric generation facilities, 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 “Carbon Capture and
5 Storage Early Deployment Act”.

1 **SEC. 2. DEFINITIONS.**

2 (1) SECRETARY.—The term “Secretary” means
3 the Secretary of Energy.

4 (2) DISTRIBUTION UTILITY.—The term “dis-
5 tribution utility” means an entity that distributes
6 electricity directly to retail consumers under a legal,
7 regulatory, or contractual obligation to do so.

8 (3) ELECTRIC UTILITY.—The term “electric
9 utility” has the meaning provided by section 3(22)
10 of the Federal Power Act (16 U.S.C. 796(22)).

11 (4) FOSSIL FUEL-BASED ELECTRICITY.—The
12 term “fossil fuel-based electricity” means electricity
13 that is produced from the combustion of fossil fuels.

14 (5) FOSSIL FUEL.—The term “fossil fuel”
15 means coal, petroleum, natural gas or any derivative
16 of coal, petroleum, or natural gas.

17 (6) CORPORATION.—The term “Corporation”
18 means the Carbon Storage Research Corporation es-
19 tablished in accordance with this Act.

20 (7) QUALIFIED INDUSTRY ORGANIZATION.—The
21 term “qualified industry organization” means the
22 Edison Electric Institute, the American Public
23 Power Association, the National Rural Electric Co-
24 operative Association, a successor organization of
25 such organizations or a group of owners or operators
26 of distribution utilities delivering fossil fuel-based

1 electricity who collectively represent at least 20 per-
2 cent of the volume of fossil fuel-based electricity de-
3 livered by distribution utilities to consumers in the
4 United States.

5 (8) RETAIL CONSUMER.—The term “retail con-
6 sumer” means an end-user of electricity.

7 **SEC. 3. CARBON STORAGE RESEARCH CORPORATION.**

8 (a) ESTABLISHMENT.—

9 (1) REFERENDUM.—Qualified industry organi-
10 zations may conduct, at their own expense, a ref-
11 erendum among the owners or operators of distribu-
12 tion utilities delivering fossil fuel-based electricity for
13 the creation of a Carbon Storage Research Corpora-
14 tion. Such referendum shall be conducted by an
15 independent auditing firm agreed to by the qualified
16 industry organizations. Voting rights in such ref-
17 erendum shall be based on the quantity of fossil
18 fuel-based electricity delivered to consumers in the
19 previous calendar year or other representative period
20 as determined by the Secretary pursuant to section
21 6. Upon approval of those persons representing two-
22 thirds of the total quantity of fossil fuel-based elec-
23 tricity delivered to retail consumers, the Corporation
24 shall be established unless opposed by the State reg-
25 ulatory authorities pursuant to paragraph (2). All

1 distribution utilities voting in the referendum shall
2 certify to the independent auditing firm the quantity
3 of fossil fuel-based electricity represented by their
4 vote.

5 (2) STATE REGULATORY AUTHORITIES.—Upon
6 its own motion or the petition of a qualified industry
7 organization, each State regulatory authority shall
8 consider its support or opposition to the creation of
9 the Corporation under paragraph (1). State regu-
10 latory authorities may notify the independent audit-
11 ing firm referred to in paragraph (1) of their views
12 on the creation of the Corporation within 180 days
13 after the enactment of this Act. If 40 percent or
14 more of the State regulatory authorities submit to
15 the independent auditing firm written notices of op-
16 position, the Corporation shall not be established
17 notwithstanding the approval of the qualified indus-
18 try organizations as provided in paragraph (1).

19 (b) TERMINATION.—The Corporation shall be au-
20 thorized to collect assessments and conduct operations
21 pursuant to this Act for a 10-year period from the date
22 6 months after the date of enactment of this Act. After
23 such 10-year period, the Corporation is no longer author-
24 ized to collect assessments and shall be dissolved on the

1 date 15 years after such date of enactment, unless the
2 period is extended by an Act of Congress.

3 (c) GOVERNANCE.—The Corporation shall operate as
4 a division or affiliate of the Electric Power Research Insti-
5 tute (EPRI) and be managed by a Board of not more than
6 15 voting members responsible for its operations, includ-
7 ing compliance with this Act. EPRI, in consultation with
8 the Edison Electric Institute, the American Public Power
9 Association and the National Rural Electric Cooperative
10 Association shall appoint the Board members under sub-
11 paragraphs (A), (B), and (C) of paragraph (1) from
12 among candidates recommended by those organizations.
13 At least a majority of the Board members appointed by
14 EPRI shall be representatives of distribution utilities sub-
15 ject to assessments under section 5.

16 (1) MEMBERS.—The Board shall include at
17 least one representative of each of the following:

18 (A) Investor-owned utilities.

19 (B) Utilities owned by a State agency or a
20 municipality.

21 (C) Rural electric cooperatives.

22 (D) Fossil fuel producers.

23 (E) Non-profit environmental organiza-
24 tions.

1 (F) Independent generators or wholesale
2 power providers.

3 (G) Consumer groups.

4 (2) NONVOTING MEMBERS.—The Board shall
5 also include as additional non-voting Members the
6 Secretary of Energy or his designee and 2 represent-
7 atives of State regulatory authorities as defined in
8 section 3(17) of the Public Utility Regulatory Poli-
9 cies Act of 1978 (16 U.S.C. 2602, 3(17)), each des-
10 ignated by the National Association of State Regu-
11 latory Utility Commissioners from States that are
12 not within the same transmission interconnection.

13 (d) COMPENSATION.—Corporation Board members
14 shall receive no compensation for their services, nor shall
15 Corporation Board members be reimbursed for expenses
16 relating to their service.

17 (e) TERMS.—Corporation Board members shall serve
18 terms of 4 years and may serve not more than 2 full con-
19 secutive terms. Members filling unexpired terms may serve
20 not more than a total of 8 consecutive years. Former
21 members of the Corporation Board may be reappointed
22 to the Corporation Board if they have not been members
23 for a period of 2 years. Initial appointments to the Cor-
24 poration Board shall be for terms of 1, 2, 3, and 4 years,

1 staggered to provide for the selection of 3 members each
2 year.

3 (f) STATUS OF CORPORATION.—The Corporation
4 shall not be considered to be an agency, department, or
5 instrumentality of the United States, and no officer or di-
6 rector or employee of the Corporation shall be considered
7 to be an officer or employee of the United States Govern-
8 ment, for purposes of title 5 or title 31 of the United
9 States Code, or for any other purpose, and no funds of
10 the Corporation shall be treated as public money for pur-
11 poses of chapter 33 of title 31, United States Code, or
12 for any other purpose.

13 **SEC. 4. FUNCTIONS AND ADMINISTRATION OF THE COR-**
14 **PORATION.**

15 (a) IN GENERAL.—The Corporation shall establish
16 and administer a program to accelerate the commercial
17 availability of carbon dioxide capture and storage tech-
18 nologies and methods, including technologies which cap-
19 ture and store, or capture and convert, carbon dioxide.
20 Under such program competitively awarded grants, con-
21 tracts, and financial assistance shall be provided and en-
22 tered into with eligible entities. Except as provided in sub-
23 section (g), the Corporation shall use all funds derived
24 from assessments under section 5 to issue grants and con-
25 tracts to eligible entities.

1 (b) PURPOSE.—The purposes of the grants, con-
2 tracts, and assistance under this section shall be to sup-
3 port commercial-scale demonstrations of carbon capture or
4 storage technology projects capable of advancing the tech-
5 nologies to commercial readiness. Such projects should en-
6 compass a range of different coal and other fossil fuel vari-
7 eties, be geographically diverse, involve diverse storage
8 media, and employ capture or storage, or capture and con-
9 version, technologies potentially suitable either for new or
10 for retrofit applications.

11 (c) ELIGIBLE ENTITIES.— Entities eligible for
12 grants, contracts or assistance under this section may in-
13 clude distribution utilities, electric utilities and other pri-
14 vate entities, academic institutions, national laboratories,
15 Federal research agencies, State research agencies, non-
16 profit organizations, or consortiums of 2 or more entities.
17 Pilot-scale and similar small-scale projects are not eligible
18 for support by the Corporation.

19 (d) ADMINISTRATION.—The members of the Board
20 of Directors of the Corporation shall elect a Chairman and
21 other officers as necessary, may establish committees and
22 subcommittees of the Corporation, and shall adopt rules
23 and bylaws for the conduct of business and the implemen-
24 tation of this Act. The Board shall appoint an Executive
25 Director and professional support staff who may be em-

1 ployees of the Electric Power Research Institute. After
2 consultation with the Technical Advisory Committee es-
3 tablished under section 10, the Secretary, and the Director
4 of the National Energy Technology Laboratory to obtain
5 advice and recommendations on plans, programs, and
6 project selection criteria, the Board shall establish prior-
7 ities for grants, contracts, and assistance; publish requests
8 for proposals for grants, contracts and assistance; award
9 grants, contracts and assistance competitively, on the
10 basis of merit, after the establishment of procedures that
11 provide for scientific peer review by the Technical Advisory
12 Committee. The Board shall give preference to applica-
13 tions that reflect the best overall value and prospect for
14 achieving the purposes of the Act, such as those which
15 demonstrate an integrated approach for capture and stor-
16 age or capture and conversion technologies. The Board
17 members shall not participate in making grants or awards
18 to entities with whom they are affiliated.

19 (e) USES OF GRANTS, CONTRACTS, AND ASSIST-
20 ANCE.—A grant, contract, or other assistance provided
21 under this section may be used to purchase carbon dioxide
22 when needed to conduct tests of carbon dioxide storage
23 sites, in the case of established projects that are storing
24 carbon dioxide emissions, or for other purposes consistent
25 with the purposes of this Act. The Corporation shall make

1 publicly available at no cost information learned as a re-
2 sult of projects which it supports financially.

3 (f) INTELLECTUAL PROPERTY.—The Board shall es-
4 tablish policies regarding the ownership of intellectual
5 property developed as a result of Corporation grants and
6 other forms of technology support. Such policies shall en-
7 courage individual ingenuity and invention.

8 (g) ADMINISTRATIVE EXPENSES.—Up to 5 percent
9 of the funds collected in any fiscal year under section 5
10 may be used for the administrative expenses of operating
11 the Corporation (not including costs incurred in the deter-
12 mination and collection of the assessments pursuant to
13 section 5).

14 (h) PROGRAMS AND BUDGET.—Before August 1 each
15 year, the Corporation, after consulting with the Technical
16 Advisory Committee and the Secretary and the Director
17 of the Department's National Energy Technology Labora-
18 tory and other interested parties to obtain advice and rec-
19 ommendations, shall publish for public review and com-
20 ment its proposed plans, programs, project selection cri-
21 teria, and projects to be funded by the Corporation for
22 the next calendar year. The Corporation shall also publish
23 for public review and comment a budget plan for the next
24 calendar year, including the probable costs of all pro-
25 grams, projects, and contracts and a recommended rate

1 of assessment sufficient to cover such costs. The Secretary
2 may recommend program and activities the Secretary con-
3 siderers appropriate.

4 (i) RECORDS; AUDITS.—The Corporation shall keep
5 minutes, books, and records that clearly reflect all of the
6 acts and transactions of the Corporation and make public
7 such information. The books of the Corporation shall be
8 audited by a certified public accountant at least once each
9 fiscal year and at such other times as the Corporation may
10 designate. Copies of each audit shall be provided to the
11 Congress, all Corporation board members, all qualified in-
12 dustry organizations, each State regulatory authority and,
13 upon request, to other members of the industry. If the
14 audit determines that the Corporation's practices fail to
15 meet generally accepted accounting principles the assess-
16 ment collection authority of the Corporation under section
17 5 shall be suspended until a certified public accountant
18 renders a subsequent opinion that the failure has been cor-
19 rected.

20 (j) PUBLIC ACCESS.—(1) The Corporation Board's
21 meetings shall be open to the public and shall occur after
22 at least 30 days advance public notice. Meetings of the
23 Board of Directors may be closed to the public where the
24 agenda of such meetings includes only confidential matters

1 pertaining to project selection, the award of grants or con-
 2 tracts, personnel matter, or the receipt of legal advice.

3 (2) The minutes of all meetings of the Corporation
 4 shall be made available to and readily accessible by the
 5 public.

6 (k) ANNUAL REPORT.—Each year the Corporation
 7 shall prepare and make publicly available a report which
 8 includes an identification and description of all programs
 9 and projects undertaken by the Corporation during the
 10 previous year. The report shall also detail the allocation
 11 or planned allocation of Corporation resources for each
 12 such program and project. The Corporation shall provide
 13 its annual report to the Congress, the Secretary, each
 14 State regulatory authority, and upon request to the public.

15 **SEC. 5. ASSESSMENTS.**

16 (a) AMOUNT.—(1) In all calendar years following its
 17 establishment, the Corporation shall collect an assessment
 18 on distribution utilities for all fossil fuel-based electricity
 19 delivered directly to retail consumers (as determined under
 20 section 6). The assessments shall reflect the relative car-
 21 bon dioxide emission rates of different fossil fuel-based
 22 electricity, and initially shall be not less than the following
 23 amounts for coal, natural gas, and oil:

Fuel type

**Rate of assessment
 per kilowatt hour**

Coal	\$0.00043
Natural Gas	\$0.00022
Oil	\$0.00032

1 (2) The Corporation is authorized to adjust the as-
 2 sessments on fossil fuel-based electricity to reflect changes
 3 in the expected quantities of such electricity from different
 4 fuel types, such that the assessments generate not less
 5 than \$1.0 billion and not more than \$1.1 billion annually.
 6 The Corporation is authorized to supplement assessments
 7 through additional financial commitments.

8 (b) INVESTMENT OF FUNDS.—Pending disbursement
 9 pursuant to a program, plan, or project, the Corporation
 10 may invest funds collected through assessments under this
 11 section, and any other funds received by the Corporation,
 12 only in obligations of the United States or any agency
 13 thereof, in general obligations of any State or any political
 14 subdivision thereof, in any interest-bearing account or cer-
 15 tificate of deposit of a bank that is a member of the Fed-
 16 eral Reserve System, or in obligations fully guaranteed as
 17 to principal and interest by the United States.

18 (c) REVERSION OF UNUSED FUNDS.—If the Cor-
 19 poration does not disburse, dedicate or assign 75 percent
 20 or more of the available proceeds of the assessed fees in
 21 any calendar year 7 or more years following its establish-
 22 ment, due to an absence of qualified projects or similar
 23 circumstances, it shall reimburse the remaining

1 undedicated or unassigned balance of such fees, less ad-
2 ministrative and other expenses authorized by this Act, to
3 the distribution utilities upon which such fees were as-
4 sessed, in proportion to their collected assessments.

5 **SEC. 6. ERCOT. .**

6 (a) ASSESSMENT, COLLECTION, AND REMITANCE.—

7 (1) Notwithstanding any other provision of this Act, with-
8 in ERCOT, the assessment provided for in section 5 shall
9 be—

10 (A) levied directly on qualified scheduling
11 entities, or their successor entities;

12 (B) charged consistent with other charges
13 imposed on qualified scheduling entities as a fee
14 on energy used by the load serving entities; and

15 (C) collected and remitted by ERCOT to
16 the Corporation in the amounts and in the
17 same manner as set forth in section 5.

18 (2) The assessment amounts referred to in paragraph
19 (1) shall be—

20 (A) determined by the amount and types of fos-
21 sil fuel-based electricity delivered directly to all retail
22 customers in the prior calendar year beginning with
23 the year ending immediately prior to the period de-
24 scribed in section 3(b); and

1 (B) take into account the number of renewable
2 energy credits retired by the load serving entities
3 represented by a qualified scheduling entity within
4 the prior calendar year.

5 (b) ADMINISTRATION EXPENSES.—Up to 1 percent
6 of the funds collected in any fiscal year by ERCOT under
7 the provisions of this section may be used for the adminis-
8 trative expenses incurred in the determination, collection
9 and remittance of the assessments to the Corporation.

10 (c) AUDIT.—ERCOT shall provide a copy of its an-
11 nual audit pertaining to the administration of the provi-
12 sions of this section to the Corporation.

13 (d) DEFINITIONS.—For the purposes of this section:

14 (1) The term “ERCOT” means the Electric Re-
15 liability Council of Texas.

16 (2) The term “load serving entities” has the
17 meaning adopted by ERCOT Protocols and in effect
18 on the date of enactment of this Act.

19 (3) The term “qualified scheduling entities” has
20 the meaning adopted by ERCOT Protocols and in
21 effect on the date of enactment of this Act.

22 (4) The term “renewable energy credit” has the
23 meaning as promulgated and adopted by the Public
24 Utility Commission of Texas pursuant to section
25 39.904(b) of the Public Utility Regulatory Act of

1 1999, and in effect on the date of enactment of this
2 Act.

3 **SEC. 7. DETERMINATION OF FOSSIL FUEL-BASED ELEC-**
4 **TRICITY DELIVERIES.**

5 (a) FINDINGS.—The Congress finds that:

6 (1) The assessments under section 5 are to be
7 collected based on the amount of fossil fuel gen-
8 erated electricity delivered by each distribution util-
9 ity.

10 (2) Since many distribution utilities purchase
11 all or part of their retail consumer's electricity needs
12 from other entities, it may not be practical to deter-
13 mine the precise fuel mix for the power sold by each
14 individual distribution utility.

15 (3) It may be necessary to use average data,
16 often on a regional basis with reference to Regional
17 Transmission organization or NERC regions, to
18 make the determinations necessary for making as-
19 sessments.

20 (b) DOE PROPOSED RULE.—The Secretary, acting
21 in close consultation with the Energy Information Admin-
22 istration, shall issue for notice and comment a proposed
23 rule to determine the level of fossil fuel electricity delivered
24 to retail customers by each distribution utility in the
25 United States during the most recent calendar year or

1 other period determined to be most appropriate. Such pro-
2 posed rule shall balance the need to be efficient, reason-
3 ably precise and timely, taking into account the nature
4 and cost of data currently available and the nature of mar-
5 kets and regulation in effect in various regions of the
6 country. Different methodologies may be applied in dif-
7 ferent regions if appropriate to obtain the best balance of
8 such factors.

9 (c) FINAL RULE.—Within 6 months after the enact-
10 ment of this Act, and after opportunity for comment, the
11 Secretary shall issue a final rule under this section for
12 determining the level and type of fossil fuel electricity de-
13 livered to retail customers by each distribution utility in
14 the United States during the appropriate period. In
15 issuing such rule, the Secretary may consider opportuni-
16 ties and costs to develop new data sources in the future
17 and issue recommendations for the Energy Information
18 Administration or other entities to collect such data. After
19 notice and opportunity for comment the Secretary may,
20 by rule, subsequently update and modify the methodology
21 for making such determinations.

22 (d) ANNUAL DETERMINATIONS.— Pursuant to the
23 final rule issued under subsection (c), the Secretary shall
24 make annual determinations of the amounts and types for
25 each such utility and publish such determinations in the

1 Federal Register. Such determinations shall be used to
2 conduct the referendum under section 3 and by the Cor-
3 poration in applying any assessment under this title.

4 (e) REHEARING AND JUDICIAL REVIEW.—The owner
5 or operator of any distribution utility that believes that
6 the Secretary has misapplied the methodology in the final
7 rule in determining the amount and types of fossil fuel
8 electricity delivered by such distribution utility may seek
9 rehearing of such determination within 30 days of publica-
10 tion of the determination in the Federal Register. The
11 Secretary shall decide such rehearing petitions within 30
12 days. The Secretary's determinations following rehearing
13 shall be final and subject to judicial review in the United
14 States court of appeals for the District of Columbia.

15 **SEC. 8. COMPLIANCE WITH CORPORATION ASSESSMENTS.**

16 The Corporation may bring an action in the appro-
17 priate court of the United States to compel compliance
18 with an assessment levied by the Corporation under this
19 Act. A successful action for compliance under this section
20 may also require payment by the defendant of the costs
21 incurred by the Corporation in bringing such action.

22 **SEC. 9. MIDCOURSE REVIEW.**

23 Not later than 5 years following establishment of the
24 Corporation, the Comptroller General of the United States
25 shall prepare an analysis, and report to Congress, assess-

1 ing the Corporation's activities, including project selection
2 and methods of disbursement of assessed fees, impacts on
3 the prospects for commercialization of carbon capture and
4 storage technologies, and adequacy of funding. The report
5 shall also make such recommendations as may be appro-
6 priate in each of these areas. The Corporation shall reim-
7 burse the Government Accountability Office for the costs
8 associated with performing this midcourse review.

9 **SEC. 10. RECOVERY OF COSTS.**

10 (a) IN GENERAL.—A distribution utility whose trans-
11 mission, delivery, or sales of electric energy are subject
12 to any form of rate regulation shall not be denied the op-
13 portunity to recover the full amount of the prudently in-
14 curred costs associated with complying with this Act, con-
15 sistent with applicable State or Federal law.

16 (b) RATEPAYER REBATES.—Regulatory authorities
17 that approve cost recovery pursuant to subsection (a) may
18 order rebates to ratepayers to the extent that distribution
19 utilities are reimbursed undedicated or unassigned bal-
20 ances pursuant to section 5(c).

21 **SEC. 11. TECHNICAL ADVISORY COMMITTEE.**

22 (a) ESTABLISHMENT.—There is established an advi-
23 sory committee, to be known as the “Technical Advisory
24 Committee”.

1 (b) MEMBERSHIP.—The Technical Advisory Com-
2 mittee shall be comprised of not less than 7 members ap-
3 pointed by the Board from among academic institutions,
4 national laboratories, independent research institutions,
5 and other qualified institutions. No member of the Com-
6 mittee shall be affiliated with EPRI or with any organiza-
7 tion having members serving on the Board. At least one
8 member of the Committee shall be appointed from among
9 officers or employees of the Department of Energy rec-
10 ommended to the Board by the Secretary of Energy.

11 (c) CHAIRPERSON AND VICE CHAIRPERSON.—The
12 Board shall designate one member of the Technical Advi-
13 sory Committee to serve as Chairperson of the Committee
14 and one to serve as Vice-Chairperson of the Committee.

15 (d) COMPENSATION.—The Board shall provide com-
16 pensation to members of the Technical Advisory Com-
17 mittee for travel and other incidental expenses and such
18 other compensation as the Board determines to be nec-
19 essary.

20 (e) PURPOSE.—The Technical Advisory shall provide
21 independent assessments and technical evaluations, as well
22 as make non-binding recommendations to the Board, con-
23 cerning Corporation activities, including but not limited
24 to the following:

1 (1) Reviewing and evaluating the Corporation's
2 plans and budgets described in section 4 (h), as well
3 as any other appropriate areas, which could include
4 approaches to prioritizing technologies, appropriate-
5 ness of engineering techniques, monitoring and
6 verification technologies for storage, geological site
7 selection, cost control measures.

8 (2) Making annual non-binding recommenda-
9 tions to the Board concerning any of the matters re-
10 ferred to in paragraph (1), as well as what types of
11 investments, scientific research, or engineering prac-
12 tices would best further to the goals of the Corpora-
13 tion.

14 (f) PUBLIC AVAILABILITY.—All reports, evaluations,
15 and other materials of the Technical Advisory Committee
16 shall be made available to the public by the Board, without
17 charge, at time of receipt by the Board.

18 **SEC. 12. LOBBYING RESTRICTIONS.**

19 No funds collected by the Corporation shall be used
20 in any manner for influencing legislation or elections, ex-
21 cept that the Corporation may recommend to the Sec-
22 retary and the Congress changes in this Act or other stat-
23 utes that would further the purposes of this Act.

1 **SEC. 13. DAVIS-BACON COMPLIANCE.**

2 The Corporation shall ensure that entities receiving
3 grants, contracts, or other financial support from the Cor-
4 poration for the project activities authorized by this Act
5 are in compliance with the Davis-Bacon Act (40 U.S.C.
6 276a-276a-5).