

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

A BILL

To promote renewable 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 “American Renewable
5 Energy Act of 2009”.

6 **SEC. 2. RENEWABLE ELECTRICITY STANDARD.**

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

10 **“SEC. 610. RENEWABLE ELECTRICITY STANDARD.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) BASE QUANTITY OF ELECTRICITY.—

1 “(A) IN GENERAL.—The term ‘base quan-
2 tity of electricity’ means the total quantity of
3 electricity sold by an electric utility to electric
4 consumers in a calendar year.

5 “(B) EXCLUSIONS.—The term ‘base quan-
6 tity of electricity’ does not include electricity
7 generated by a hydroelectric facility (including
8 a pumped storage facility but excluding incre-
9 mental hydropower).

10 “(2) DISTRIBUTED GENERATION FACILITY.—
11 The term ‘distributed generation facility’ means a
12 facility at a customer site.

13 “(3) EXISTING RENEWABLE ENERGY.—Except
14 as provided in paragraph (7)(B), the term ‘existing
15 renewable energy’ means electric energy generated
16 at a facility (including a distributed generation facil-
17 ity) placed in service prior to January 1, 2001, from
18 solar, wind, or geothermal energy, ocean energy, bio-
19 mass (as defined by the Secretary of the Interior),
20 municipal solid waste, or landfill gas.

21 “(4) GEOTHERMAL ENERGY.—The term ‘geo-
22 thermal energy’ means energy derived from a geo-
23 thermal deposit (within the meaning of section
24 613(e)(2) of the Internal Revenue Code of 1986).

1 “(5) INCREMENTAL GEOTHERMAL PRODUC-
2 TION.—

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

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

10 “(ii) the average number of kilowatt
11 hours produced annually at the facility for
12 5 of the previous 7 calendar years before
13 the date of enactment of this section after
14 eliminating the highest and the lowest kilo-
15 watt hour production years in that 7-year
16 period.

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

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

3 “(6) INCREMENTAL HYDROPOWER.—

4 “(A) IN GENERAL.—The term ‘incremental
5 hydropower’ means additional energy generated
6 as a result of efficiency improvements or capac-
7 ity additions made on or after—

8 “(i) January 1, 2001; or

9 “(ii) the effective commencement date
10 of an existing applicable State renewable
11 portfolio standard program at a hydro-
12 electric facility that was placed in service
13 before that date.

14 “(B) EXCLUSION.—The term ‘incremental
15 hydropower’ does not include additional energy
16 generated as a result of operational changes not
17 directly associated with efficiency improvements
18 or capacity additions.

19 “(C) MEASUREMENT AND CERTIFI-
20 CATION.—Efficiency improvements and capacity
21 additions referred to in subparagraph (B) shall
22 be—

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

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

3 “(ii) certified by the Secretary or the
4 Federal Energy Regulatory Commission.

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

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

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

13 “(ii) biomass (as defined by the Sec-
14 retary of the Interior);

15 “(iii) landfill gas;

16 “(iv) municipal solid waste;

17 “(v) incremental hydropower; or

18 “(vi) hydropower that has been cer-
19 tified by the Low Impact Hydropower In-
20 stitute; and

21 “(B) for electric energy generated at a fa-
22 cility (including a distributed generation facil-
23 ity) placed in service before the date of enact-
24 ment of this section—

1 “(i) the additional energy above the
2 average generation during the 3-year pe-
3 riod ending on the date of enactment of
4 this section at the facility from—

5 “(I) solar, wind, or ocean energy;

6 “(II) landfill gas;

7 “(III) municipal solid waste;

8 “(IV) incremental hydropower; or

9 “(V) incremental geothermal pro-
10 duction; and

11 “(ii) the electric energy derived from
12 biomass (as defined by the Secretary of the
13 Interior).

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

16 “(b) RENEWABLE ELECTRICITY REQUIREMENT.—

17 “(1) REQUIREMENT.—

18 “(A) IN GENERAL.—Subject to subpara-
19 graph (B), each electric utility that sells elec-
20 tricity to electric consumers shall obtain a per-
21 centage of the base quantity of electricity the
22 electric utility sells to electric consumers in any
23 calendar year from new renewable energy or ex-
24 isting renewable energy.

1 “(B) PERCENTAGE.—The percentage ob-
 2 tained in a calendar year under subparagraph
 3 (A) shall not be less than the amount specified
 4 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. |

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

8 “(A) submitting to the Secretary renewable
 9 energy credits issued under subsection (c);

10 “(B) making alternative compliance pay-
 11 ments to the Secretary at the rate of 2 cents
 12 per kilowatt hour (as adjusted for inflation
 13 under subsection (g)); or

14 “(C) conducting a combination of activities
 15 described in subparagraphs (A) and (B).

16 “(3) GREEN JOBS.—In carrying out this sec-
 17 tion, the Secretary shall, to the maximum extent

1 practicable, provide an additional incentive to elec-
2 tric utilities that, in meeting the requirements of
3 paragraph (1), also—

4 “(A) create jobs that pay a living wage
5 that supports a family;

6 “(B) provide health insurance benefits to
7 employees; and

8 “(C) comply with all Federal labor and en-
9 vironmental laws (including regulations).

10 “(c) RENEWABLE ENERGY CREDIT TRADING PRO-
11 GRAM.—

12 “(1) IN GENERAL.—Not later than December
13 31, 2010, the Secretary shall establish a renewable
14 energy credit trading program under which electric
15 utilities shall submit to the Secretary renewable en-
16 ergy credits to certify the compliance of the electric
17 utilities with respect to obligations under subsection
18 (b)(1).

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

21 “(A) issue tradeable renewable energy
22 credits to generators of electric energy from
23 new renewable energy;

1 “(B) issue nontradeable renewable energy
2 credits to generators of electric energy from ex-
3 isting renewable energy;

4 “(C) issue renewable energy credits to elec-
5 tric utilities associated with State renewable
6 portfolio standard compliance mechanisms pur-
7 suant to subsection (h);

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

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

17 “(F) ensure that, with respect to a pur-
18 chaser that, as of the date of enactment of this
19 section, has a purchase agreement from a re-
20 newable energy facility placed in service before
21 that date (other than a biomass energy facility),
22 the credit associated with the generation of re-
23 newable energy under the contract is issued to
24 the purchaser of the electric energy.

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

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

11 “(5) DELEGATION OF MARKET FUNCTION.—
12 The Secretary may delegate to an appropriate entity
13 that establishes markets the administration of a na-
14 tional tradeable renewable energy credit market for
15 purposes of creating a transparent national market
16 for the sale or trade of renewable energy credits.

17 “(d) ENFORCEMENT.—

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

21 “(2) AMOUNT OF PENALTY.—Subject to para-
22 graph (3), the amount of the civil penalty shall be
23 equal to the product obtained by multiplying—

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

4 “(B) the greater of—

5 “(i) 2 cents (adjusted for inflation
6 under subsection (g)); or

7 “(ii) 200 percent of the average mar-
8 ket value of renewable energy credits dur-
9 ing the year in which the violation oc-
10 curred.

11 “(3) MITIGATION OR WAIVER.—

12 “(A) IN GENERAL.—The Secretary may
13 mitigate or waive a civil penalty under this sub-
14 section if the electric utility is unable to comply
15 with subsection (b) due to a reason outside of
16 the reasonable control of the electric utility.

17 “(B) REDUCTION.—The Secretary shall re-
18 duce the amount of any penalty determined
19 under paragraph (2) by an amount paid by the
20 electric utility to a State for failure to comply
21 with the requirement of a State renewable en-
22 ergy program if the State requirement is great-
23 er than the applicable requirement of subsection
24 (b).

1 “(4) PROCEDURE FOR ASSESSING PENALTY.—

2 The Secretary shall assess a civil penalty under this
3 subsection in accordance with the procedures pre-
4 scribed by section 333(d) of the Energy Policy and
5 Conservation Act (42 U.S.C. 6303(d)).

6 “(e) STATE RENEWABLE ENERGY ACCOUNT PRO-
7 GRAM.—

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

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

15 “(3) USE.—Subject to appropriations, proceeds
16 deposited in the State renewable energy account
17 shall be used by the Secretary to carry out a pro-
18 gram to provide grants to the State agency respon-
19 sible for developing State energy conservation plans
20 under section 362 of the Energy Policy and Con-
21 servation Act (42 U.S.C. 6322) for the purposes of
22 promoting renewable energy production, including
23 programs that promote technologies that reduce the
24 use of electricity at customer sites, such as solar
25 water heating.

1 “(4) ADMINISTRATION.—The Secretary may
2 issue guidelines and criteria for grants awarded
3 under this subsection.

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

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

10 “(A) to States in regions that have a dis-
11 proportionately small share of economically sus-
12 tainable renewable energy generation capacity;
13 and

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

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

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

21 “(2) in Hawaii.

22 “(g) INFLATION ADJUSTMENT.—Not later than De-
23 cember 31 of each year beginning in 2010, the Secretary
24 shall adjust for United States dollar inflation from Janu-
25 ary 1, 2010 (as measured by the Consumer Price Index)—

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

3 “(2) the amount of the civil penalty per kilo-
4 watt-hour under subsection (d)(2).

5 “(h) STATE PROGRAMS.—

6 “(1) IN GENERAL.—Subject to paragraph (2),
7 nothing in this section diminishes any authority of
8 a State or political subdivision of a State to adopt
9 or enforce any law or regulation respecting renew-
10 able energy.

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

15 “(3) COORDINATION.—The Secretary, in con-
16 sultation with States having such renewable energy
17 programs, shall, to the maximum extent practicable,
18 facilitate coordination between the Federal program
19 and State programs.

20 “(4) REGULATIONS.—

21 “(A) IN GENERAL.—The Secretary, in con-
22 sultation with States, shall promulgate regula-
23 tions to ensure that an electric utility subject to
24 the requirements of this section that is also
25 subject to a State renewable energy standard

1 receives renewable energy credits in relation to
2 equivalent quantities of renewable energy asso-
3 ciated with compliance mechanisms, other than
4 the generation or purchase of renewable energy
5 by the electric utility, including the acquisition
6 of certificates or credits and the payment of
7 taxes, fees, surcharges, or other financial com-
8 pliance mechanisms by the electric utility or a
9 customer of the electric utility, directly associ-
10 ated with the generation or purchase of renew-
11 able energy.

12 “(B) PROHIBITION ON DOUBLE COUNT-
13 ING.—The regulations promulgated under this
14 paragraph shall ensure that a kilowatt hour as-
15 sociated with a renewable energy credit issued
16 pursuant to this subsection shall not be used
17 for compliance with this section more than
18 once.

19 “(i) RECOVERY OF COSTS.—

20 “(1) IN GENERAL.—The Commission shall issue
21 and enforce such regulations as are necessary to en-
22 sure that an electric utility recovers all prudently in-
23 curred costs associated with compliance with this
24 section.

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

6 “(j) WIND ENERGY DEVELOPMENT STUDY.—The
7 Secretary, in consultation with appropriate Federal and
8 State agencies, shall conduct, and submit to Congress a
9 report describing the results of, a study on methods to
10 increase transmission line capacity for wind energy devel-
11 opment.

12 “(k) REGULATIONS.—Not later than 1 year after the
13 date of enactment of this section, the Secretary shall pro-
14 mulgate regulations implementing this section.

15 “(l) TERMINATION OF AUTHORITY.—This section
16 and the authority provided by this section terminate on
17 December 31, 2040.”.

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

“Sec. 609. Rural and remote communities electrification grants.

“Sec. 610. Renewable electricity standard.”.

1 **SEC. 3. REDUCING BARRIERS TO SUPPLY CHAIN MANUFAC-**
2 **TURING OF RENEWABLE ENERGY EQUIP-**
3 **MENT.**

4 (a) **AUTHORIZATION OF APPROPRIATIONS.**—There is
5 authorized to be appropriated \$50,000,000 for the Hol-
6 lings Manufacturing Partnership Program, established
7 under section 25 of the National Institute of Standards
8 and Technology Act (15 U.S.C. 278k).

9 (b) **USE OF FUNDS.**—Amounts appropriated pursu-
10 ant to subsection (a) shall be used to implement a strategy
11 for reducing barriers to supply chain manufacturing of re-
12 newable energy equipment.

13 **SEC. 4. WIND ENERGY SYSTEMS.**

14 Section 14 of the Wind Energy Systems Act of 1980
15 (42 U.S.C. 9213) is amended to read as follows:

16 **“SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

17 **“(a) IN GENERAL.**—There are authorized to be ap-
18 propriated to the Secretary to carry out wind energy re-
19 search, development, and deployment through the Energy
20 Efficiency and Renewable Energy Office of the Depart-
21 ment of Energy in accordance with this section—

22 “(1) \$275,000,000 for fiscal year 2010;

23 “(2) \$446,000,000 for fiscal year 2011;

24 “(3) \$602,000,000 for fiscal year 2012;

25 “(4) \$698,000,000 for fiscal year 2013; and

26 “(5) \$794,500,000 for fiscal year 2014.

1 “(b) WIND TURBINE TECHNOLOGY AND RELI-
2 ABILITY.—Of amounts made available under subsection
3 (a), the Secretary shall use for land-based wind turbine
4 technology and reliability—

5 “(1) \$30,000,000 for fiscal year 2010;

6 “(2) \$50,000,000 for fiscal year 2011;

7 “(3) \$70,000,000 for fiscal year 2012;

8 “(4) \$80,000,000 for fiscal year 2013; and

9 “(5) \$100,000,000 for fiscal year 2014.

10 “(c) WIND ENERGY SYSTEM INTEGRATION AND
11 TRANSMISSION DEVELOPMENT.—Of amounts made avail-
12 able under subsection (a), the Secretary shall use for wind
13 energy system integration and transmission develop-
14 ment—

15 “(1) \$20,000,000 for fiscal year 2010;

16 “(2) \$25,000,000 for fiscal year 2011;

17 “(3) \$30,000,000 for fiscal year 2012;

18 “(4) \$35,000,000 for fiscal year 2013; and

19 “(5) \$40,000,000 for fiscal year 2014.

20 “(d) ADVANCED WIND ENERGY BLADES.—Of
21 amounts made available under subsection (a), the Sec-
22 retary shall use for advanced wind blade design, materials,
23 and manufacturing processes—

24 “(1) \$50,000,000 for fiscal year 2010;

25 “(2) \$65,000,000 for fiscal year 2011;

1 “(3) \$75,000,000 for fiscal year 2012;

2 “(4) \$80,000,000 for fiscal year 2013; and

3 “(5) \$85,000,000 for fiscal year 2014.

4 “(e) OFFSHORE WIND.—Of amounts made available
5 under subsection (a), the Secretary shall use for accel-
6 erating the design, development, testing, and deployment
7 of advanced offshore wind technology and supporting con-
8 struction, operations, and maintenance infrastructure—

9 “(1) \$100,000,000 for fiscal year 2010;

10 “(2) \$200,000,000 for fiscal year 2011;

11 “(3) \$300,000,000 for fiscal year 2012;

12 “(4) \$350,000,000 for fiscal year 2013; and

13 “(5) \$400,000,000 for fiscal year 2014.

14 “(f) WIND POWERING AMERICA PROGRAM.—Of the
15 amounts made available under subsection (a), the Sec-
16 retary shall use for and support the Wind Powering Amer-
17 ica program outreach and technical assistance activities—

18 “(1) \$15,000,000 for fiscal year 2010;

19 “(2) \$25,000,000 for fiscal year 2011;

20 “(3) \$35,000,000 for fiscal year 2012;

21 “(4) \$40,000,000 for fiscal year 2013; and

22 “(5) \$45,000,000 for fiscal year 2014.

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

1 and support the establishment of technical training pro-
 2 grams with community colleges and technical schools—

3 “(1) \$40,000,000 for fiscal year 2010;

4 “(2) \$55,000,000 for fiscal year 2011;

5 “(3) \$60,000,000 for fiscal year 2012;

6 “(4) \$75,000,000 for fiscal year 2013; and

7 “(5) \$80,000,000 for fiscal year 2014.

8 “(h) WIND ENERGY TEACHING TRAINING AND CUR-
 9 RICULA.—Of amounts made available under subsection
 10 (a), the Secretary shall use for and support establishment
 11 of wind education, teaching training, and curricula devel-
 12 opment programs at kindergarten through grade 12 lev-
 13 els—

14 “(1) \$4,000,000 for fiscal year 2010;

15 “(2) \$5,000,000 for fiscal year 2011;

16 “(3) \$6,000,000 for fiscal year 2012;

17 “(4) \$7,000,000 for fiscal year 2013; and

18 “(5) \$8,000,000 for fiscal year 2014.

19 “(i) WIND RESOURCE MODELING AND WIND FARM
 20 EFFICIENCY ASSESSMENT.—Of amounts made available
 21 under subsection (a), the Secretary shall use for wind re-
 22 source modeling and wind farm efficiency assessment—

23 “(1) \$5,000,000 for fiscal year 2010;

24 “(2) \$6,000,000 for fiscal year 2011;

25 “(3) \$7,000,000 for fiscal year 2012;

1 “(4) \$8,000,000 for fiscal year 2013; and

2 “(5) \$10,000,000 for fiscal year 2014.

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

9 “(1) \$6,000,000 for fiscal year 2010;

10 “(2) \$8,000,000 for fiscal year 2011;

11 “(3) \$10,000,000 for fiscal year 2012;

12 “(4) \$13,000,000 for fiscal year 2013; and

13 “(5) \$16,000,000 for fiscal year 2014.

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

18 “(1) \$5,000,000 for fiscal year 2010;

19 “(2) \$7,000,000 for fiscal year 2011;

20 “(3) \$9,000,000 for fiscal year 2012;

21 “(4) \$10,000,000 for fiscal year 2013; and

22 “(5) \$10,500,000 for fiscal year 2014.”.

1 **SEC. 5. TEMPORARY REMOVAL OF CERTAIN TAX RESTRIC-**
2 **TIONS TO PROMOTE EXPANSION OF CAPITAL**
3 **FOR WIND FARM INVESTMENT.**

4 (a) EXEMPTION FROM PASSIVE LOSS RULES.—

5 (1) IN GENERAL.—Section 469(c) of the Inter-
6 nal Revenue Code of 1986 (defining passive activity)
7 is amended by adding at the end the following new
8 paragraph:

9 “(8) CERTAIN RENEWABLE ENERGY FACILI-
10 TIES.—The term ‘passive activity’ shall not include
11 any trade or business involving ownership of 1 or
12 more facilities described in section 45(d)(1).”.

13 (2) EFFECTIVE DATE.—The amendment made
14 by this subsection shall apply to taxable years begin-
15 ning after December 31, 2008.

16 (b) APPLICATION OF AT-RISK RULES.—

17 (1) IN GENERAL.—Section 465(b)(6) of the In-
18 ternal Revenue Code of 1986 (relating to qualified
19 nonrecourse financing treated as amount at risk) is
20 amended—

21 (A) by inserting “or renewable energy
22 property” after “real property” each place it
23 appears in subparagraphs (A) and (B)(i), and

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

1 “(F) RENEWABLE ENERGY PROPERTY.—

2 The term ‘renewable energy property’ means
3 property described in section 45(d)(1).”.

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

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

11 (1) IN GENERAL.—Section 7704(d) of the In-
12 ternal Revenue Code of 1986 (defining qualifying in-
13 come) is amended—

14 (A) by inserting “wind energy,” after “fer-
15 tilizer,” in paragraph (1)(E), and

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

18 “(6) WIND ENERGY.—For purposes of para-
19 graph (1)(E), income and gains from wind energy
20 include amounts realized from the sale of renewable
21 energy credits, pollution allowances, and other envi-
22 ronmental attributes.”.

23 (2) EFFECTIVE DATE.—The amendments made
24 by this subsection shall apply on the date of enact-
25 ment of this Act.

1 (d) SUNSET.—The amendments made by this section
2 shall not apply to taxable years beginning after December
3 31, 2010. The Internal Revenue Code of 1986 shall be
4 applied and administered to taxable years described in the
5 preceding sentence as if such amendments had never been
6 enacted.

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

○